TOPIC INDEX AND BTA CASES
VOLUME 3
BTA OPINIONS ISSUED FROM
JANUARY 2, 2019 – DECEMBER 31, 2019

The decisions of Ohio's Board of Tax Appeals ("BTA") in this **Volume 3** were issued commencing on **January 1, 2019 and continue chronologically through December 31, 2019**. The first part of this **Volume 3** contains a topic index numbered in Roman numerals. It alphabetically categorizes, by legal topic, decisions of the BTA issued from **January 2, 2019 through December 31, 2019.** Starting on August 2, 2017, BTA decisions for other periods not covered in this **Volume 3** can be found in the other volumes of this series under the RESOURCES tab of the OBORRC website. Each of those other volumes is structured in the same manner as this one. The second part of this **Volume 3** contains the actual text of BTA decisions issued during the above period. Those decisions are in pdf format and can be searched with your search tool using the topic index, as described below, or by using individual words or word strings.

A FEW TIPS BEFORE BEGINNING YOUR SEARCH

If you are looking for a decision that addresses a specific legal topic, you may find it helpful to first go to the topic index. Using the topic index you can identify BTA decisions that address that topic (issued during the time period covered by this volume) and find the page within this volume where the decision can be located, as well as the paragraph number (in most instances) within each decision where the law addressing the specific topic can be found. It should be noted that not all volumes contain cases for all legal topic listed in the topic index.

After you find the page of the applicable decision, you can navigate to it quickly by putting the page number into your search tool. Once you locate the decision, you can either read it as it appears in this volume or use the hyperlink to read it as it appears on the BTA's website. This volume contains finding aids, however, that are not contained in the BTA's website.

For example, if you were looking to see whether a Sheriff's Sale is considered an arm's length sale for purposes of establishing a property's value, you would search under "Sheriff's Sales" in the Valuation section of topic index. There, for example, you would see a case entitled ***Jason Augenstein v. Clark County Board of Revision*** **(March 4, 2019), BTA No. 2018-1253 (Vol. 3/0205 ‖ 10)**. The information highlighted in yellow shows that the law in that decision addressing sheriff's sales can specifically be found in this volume on **page 0205** and in **paragraph [10]** on that page.

The BTA decisions in these volumes relate only to county boards of revision and do not include BTA decisions relating to decisions of the Ohio Tax Commissioner. In addition, they do not include the following: decisions relating to settlement stipulations, voluntary dismissals, small claims, as well as BTA scheduling, discovery, or other procedural matters.

Finally, please be aware that the optical process of converting these decisions from the format in which they are issued by the BTA to the Word format you see below sometimes results in misspellings, missing or scrambled words or lines, and occasional inconsistent spacing and formatting. Accordingly, we make no representations of any kind regarding the completeness of the decisions below, the accuracy of the conversion or formatting process, or the accuracy or completeness of the text of the opinions reproduced below. **The decisions below should not be used as a substitute for the official versions of these BTA decisions and any individuals intending to use the decisions below for any purpose should rely solely on the official versions of these decisions as they appear on the website of the Ohio Board of Tax Appeals at** http://bta.ohio.gov/

TOPIC INDEX FOR VOLUME 3

APPRAISER

Auditor's Appraisal Staff, Lack of Testimony By –

Challenging Appraisal Through Use of Unverified, Unadjusted County Records –

Competing Appraisals, Analysis Of –

Keith Chacksfield v. Hamilton County Board of Revision (June 5, 2019), BTA No. 2018-1988 (Vol. 3/0581)

Frank Cook Senior Housing, L.P. v. Muskingum County Board of Revision (May 13, 2019), BTA No. 2016-1043 (Vol. 3/0465)

Buckeye Community Twenty One LP v. Muskingum County Board of Revision (May 20, 2019), BTA No. 2016-1047 (Vol. 3/531 ¶11)

Failure to Appear before the BOR -

Neil Boon v. Hamilton County Board of Revision (May 20, 2019), BTA No. 2018-1884 (Vol. 3/0489 ¶ 7)

May Lou Bolce v. Hamilton County Board of Revision (May 20, 2019), BTA No. 2018-1518 (Vol. 3 0493 - 0494/¶ 8)

Theresa Louise Barley v. Greene County Board of Revision (May 20, 2019), BTA No. 2018-948 [Appraiser failed to appear and credibility issues with the written appraisal] (Vol. 3/0503 ¶ 4)

Douglas Freer v. Cuyahoga County Board of Revision (May 20, 2019), BTA No. 2018-805 (Vol. 3/0510 ¶ 6)

Format of the Appraisal –

Summary of Appraisal, Use of -

Testimony By, Regarding A Non-Appraisal "Valuation Analysis" –

Unattested Appraisal as "Corroborating Indicia" of Value –

Use of Appraisal, Non-Tax Lien Date, When -

Jason Augenstein v. Clark County Board of Revision (March 4, 2019), BTA No. 2018-1253 (Vol. 3/0205 – 0206 ¶¶ 7, 8)

Use of Appraisal Where Property Has Sold -

Weight and Credibility of Appraisal -

ARM'S LENGTH SALE

§1031 Exchange, Impact of –

Abandoned and Dilapidated Property –

Admission by Owner that Sale is Not Arm's Length, Impact of –

Deed Restrictions, Impact of On –

Bainbrook/Laurel Springs Homeowners Association, Inc. v. Geauga County Board of Revision (September 30, 2019), BTA No. 2018-1444 (Vol. 3/1295 - 1296 ¶ 7)

Duress –

Beavercreek City Schools Board of Education v. Greene County Board of Revision (August 19, 2019), BTA No. 2018-1314 (Vol. 3/0936 – 0937 ¶ 9)

Failure to List for Sale on the Open Market, Impact of On –

Fannie Mae, Sale From –

1721 Radio LLC v. Montgomery County Board of Revision (March 28, 2019), BTA Nos. 2018-586, 587, 588, 589, 590; 2018-633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645; 2018-659; 2018-775 (Vol. 3/0291 ¶ 42)

Freddie Mac, Sale From -

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 4, 2019), BTA Nos. 2018-255, 2018-256 (Vol. 3/0196 ¶ 5)

Sale/Leaseback Transactions –

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 11, 2019), BTA Nos. 2017-278, 279, 280, 293, 295 – 298 (Vol. 3/0236)

QCA-Parma, LLC v. Cuyahoga County Board of Revision (June 19, 2019), BTA No. 2017-2169 (Vol. 3/0623)

Abbey Church Village (TC2) Housing Limited Partnership v. Franklin County Board of Revision (January 28, 2019), BTA No. 2017-1055 (Vol. 3/0104)

AUCTION SALE

See Valuation

BOARD OF REVISION

Burden of Proof at –

Ilvio Zaccardelli v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2019-544 (Vol. 3/1651)

Cuyahoga Falls City Schools Board of Education v. Summit County Board of Revision (August 28, 2019), BTA No. 2018-1202 (Vol. 3/1027)

Beavercreek City Schools Board of Education v. Greene County Board of Revision (August 19, 2019), BTA No. 2018-1314 (Vol. 3/0935 - 0936 ¶ 7)

Shelby Hersh v. Cuyahoga County Board of Revision (August 27, 2019), BTA No. 2018-1129 (Vol. 3/1018 – 1019 ¶ 4)

Hillwood II Holdings LLC v. Summit County Board of Revision (August 21, 2019), BTA No. 2018-1469 (Vol. 3/0988)

1721 Radio LLC v. Montgomery County Board of Revision (March 28, 2019), BTA Nos. 2018-586, 587, 588, 589, 590; 2018-633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645; 2018-659; 2018-775 (Vol. 3/0285 ¶ 6)

341 Castlewood LLC v. Montgomery County Board of Revision (October 18, 2019), BTA Nos. 2018-987, 1339, 1341, 1343, 1344, 1345, 1351, 1352, 1353, 1355, 1356, 1357, 1359, 1362, 1445, 1446, 9898, 990 (Vol. 3/1358 - 1359 ¶ 6)

Evidence at Hearing –

Off the Record Remarks by Staff Appraiser –

Rules of Evidence

Columbus City Schools Board of Education v. Franklin County Board of Revision (October 28, 2019), BTA No. 2018-1604 (Vol. 3/1400 ¶5)

Kauffman Vine LLC v. Hamilton County Board of Revision (April 2, 2019), BTA No. 2018-1650 (Vol. 3/0333)

Statements of Legal Counsel -

Douglas Freer v. Cuyahoga County Board of Revision (May 20, 2019), BTA No. 2018-805 (Vol. 3/0510 – 0511 ¶ 7) ¶

Tammy Freer v. Cuyahoga County Board of Revision (May 20, 2019), BTA No. 2018-804 (Vol. 3/0513 ¶ 5)

BBK/Easton Office, LLC v. Franklin County Board of Revision (November 19, 2019), BTA No. 2018-2153 (Vol. 3/1435)

RBT Industries, LLC v. Stark County Board of Revision (August 15, 2019), BTA No. 2018-1467 (Vol. 3/0922)

R.E.L. Limited Partnership v. Lake County Board of Revision (December 23, 2019), BTA No. 2019-453 (Vol. 3/1590)

Select Medical Property Ventures LLC v. Franklin County Board of Revision (November 19, 2019), BTA No. 2018-2103 (Vol. 3/1439)

Canton City Schools Board of Education v. Stark County Board of Revision (July 31, 2019), BTA No. 2018-1407 (Vol. 3/0783)

Groveport Madison Local Schools Board of Education v. Franklin County Board of Revision (November 22, 2019), BTA No. 2018-1263 (Vol. 3/1468)

Canton Local Schools Board of Education v. Stark County Board of Revision (January 18, 2019), BTA No. 2017-1882 (Vol. 3/0070)

Columbus City Schools Board of Education v. Franklin County Board of Revision (October 28, 2019), BTA No. 2018-1604 (Vol. 3/1402 ¶ 7)

Ravenna School District Board of Education v. Portage County Board of Revision (January 18, 2019), BTA No. 2017-1497 (Vol. 3/0075)

Akron City Schools Board of Education v. Summit County Board of Revision (January 2, 2019), BTA No. 2017-1714 (Vol. 3/0016)

Jurisdiction –

Community Reinvestment Area ("CRA") Cases, Jurisdiction of BOR to Hear -

ECC-Center, LLC v. Hamilton County Board of Revision (May 6, 2019), BTA No. 2018-1977 (Vol. 3/0431 – 0432 ¶ 11)

Philips Medical Systems (Cleveland), Inc. F/K/A Picker X-Ray Corp. v. Cuyahoga County Board of Revision (June 14, 2019), BTA No. 2019-25 (Vol. 3/0615 – 0616 ¶¶ 6, 7, 8)

Continuing Complaint Jurisdiction –

Corex Partners LLC/Chou Katella Partners, LLC v. Franklin County Board of Revision (April 17, 2019), BTA No. 2018-1602 (Vol. 3/0390 – 0391)

Notice of BOR Hearing –

"Owner of Property", Who is for Purposes of Jurisdiction –

Second Filing Within Three Year Interim Period

Philips Medical Systems (Cleveland), Inc. F/K/A Picker X-Ray Corp. v. Cuyahoga County Board of Revision (June 14, 2019), BTA No. 2019-25 (Vol. 3/0616 ¶ 8)

Holli Frenden Kingsbury v. Cuyahoga County Board of Revision (July 2, 2019), BTA No. 2019-308 (Vol. 3/0653 – 0654 ¶¶ 3, 4)

Jami Itiavkase & Bem Itiavkase v. Hamilton County Board of Revision (August 27, 2019), BTA No. 2019-515 (Vol. 3/1006 – 1007 ¶¶ 3, 4)

Subject Matter –

Subsurface Rights –

Trustee as Owner of Property Held by Trust –

Powers Of –

Whether BOR Can Dismiss Complaint for Failure to Provide Information –

Whether BOR Can Issue Subpoena Duces Tecum -

BOARD OF TAX APPEALS

Appeals To -

Triggering of Time to Appeal –

Where Notice of Appeal Must Be Filed –

Where Filed at Commons Pleas Court and then with BTA –

Who May File Notice of Appeal to BTA –

Bedford Rule –

See Valuation

Burden of Going Forward, When Shifts to BOE at BTA ("Bedford Rule") –

Jackson Local Schools Board of Education v. Stark County Board of Revision (May 31, 2019), BTA No. 2017-1895 (Vol. 3/0563 ⁋⁋ 4, 5)

Plain Local Schools Board of Education v. Stark County Board of Revision (October 28, 2019), BTA No. 2017-1887 (Vol. 3/1407 – 1408 ⁋ 5)

Akron City Schools Board of Education v. Summit County Board of Revision (November 19, 2019), BTA No. 2018-1686 (Vol. 3/1443 – 1444 ⁋ 5, 6)

DTE 4 Appeal Form -

Equitable Jurisdiction, Lack of –

Factual Findings of the BOR, Whether BTA is Bound by -

How Notice of Appeal Must be Filed -

Lack of Jurisdiction to Hear Appeal -

Voluntary Dismissal of Appeal -

Whether BOR's Decision is Presumed to Be Valid at BTA –

Whether BTA is Bound by Factual Findings of the BOR -

Whether BTA is Bound by Its Prior Valuation Ruling on the Same Property –

Witness, Preclusion of for Failure to Testify at BOR –

BULK PROPERTY SALES

See Valuation

CAUV (CURRENT AGRICULTURAL USE VALUATION)

Burden of Proof –

Removal from CAUV Program –

COMPARABLE SALES

By Non-Appraiser –

Who Calculates Price Per Square Foot of Comps –

Weight Given to Listing of Comparable Sales by Owner -

Westerville City Schools Board of Education v. Franklin County Board of Revision (February 5, 2019), BTA Nos. 2018-248, 2018-249 (Vol. 3/0138 – 0139 ⁋ 8)

Gloria J. Hill v. Hamilton County Board of Revision (April 3, 2019), BTA No. 2018-1392 (Vol. 3/339 ⁋ 9)

Virani Nazimuddin and Diane v. Lucas County Board of Revision (December 23, 2019), BTA No. 2019-357 (Vol. 3/1594 ⁋ 6)

COMPLAINT AT BOR

Carryforward of Complaint –

"Casualty" Exception to Second Filing in Interim Period –

Discrepancy in Complaint -

Filing Deadline

Filing By Family Member -

Lavalle Michelle v. Cuyahoga County Board of Revision (November 20, 2019), BTA No. 2019-1861 (Vol. 3/1462 – 1463 ⁋ 2)

Filing By Family Member with Power of Attorney –

Filing By Property Manager –

Filing By Property Manager if Owner's Attorney Appears at and Represents Owner at BOR Hearing –

Mistaken Information on Line 8 of Complaint Form-

Standing to File Complaint –

City of Cincinnati v. Hamilton County Board of Revision (March 25, 2019), BTA No. 2018-1629 (Vol. 3/0249)

Kettering City Schools Board of Education v. Montgomery County Board of Revision (May 15, 2019), BTA No. 2018-2216 (Vol. 3/0478)

Northridge Local Schools Board of Education v. Montgomery County Board of Revision (May 15, 2019), BTA No. 2018-2251 (Vol. 3/0476)

RBT Industries, LLC v. Stark County Board of Revision (August 15, 2019), BTA No. 2018-1467 (Vol. 3/0921 - 0922)

Kauffman Vine LLC v. Hamilton County Board of Revision (April 2, 2019), BTA No. 2018-1650 (Vol. 3/0332 - 0333)

Timeliness of Filing, Burden of Proof –

Whether BOR Acquires Jurisdiction Where Line 8 on Complaint Form is Non-Responsive or Provides No Information -

Brian Edgar Garry v. Hamilton County Board of Revision (April 8, 2019), BTA No. 2018-1212 (Vol. 3/0367)

COUNTY AUDITOR

Value Appraised by Auditor –

Whether Presumed to Be Valid –

DTE FORM 1 (BOR COMPLAINT FORM)

Failure to Complete Section 8 (in prior form) or 9 (in current form) on the Form –

See Arm's Length Sale

FRAUD

See Valuation

GOVERNMENT SUBSIDIZED HOUSING

See Valuation

GROSS RENT MULTIPLIER

Failure of Evidence to Support -

Columbus City Schools Board of Education v. Franklin County Board of Revision (January 15, 2019), BTA No. 2018-179 (Vol. 3/0044 – 0045 ⁋⁋ 7, 8)

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 4, 2019), BTA No. 2018-253 (Vol. 3/0202 ⁋ 14)

1721 Radio LLC v. Montgomery County Board of Revision (March 28, 2019), BTA Nos. 2018-586, 587, 588, 589, 590; 2018-633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645; 2018-659; 2018-775 (Vol. 3/0286 – 0287 ⁋⁋ 11, 12)

1375 Cory LLC v. Montgomery County Board of Revision (April 9, 2019), BTA No. 2018-1419 (Vol. 3/0372 – 0373 ⁋ 7)

Columbus City Schools Board of Education v. Franklin County Board of Revision (August 19, 2019), BTA Nos. 2018-1256, 2018-1260 (Vol. 3/0943 – 0944 ⁋ 8)

341 Castlewood LLC v. Montgomery County Board of Revision (October 18, 2019), BTA Nos. 2018-987, 1339, 1341, 1343, 1344, 1345, 1351, 1352, 1353, 1355, 1356, 1357, 1359, 1362, 1445, 1446, 9898, 990 (Vol. 3/1361 – 1362 ⁋ 11)

HOME OWNERS ASSOCIATION

Sale of Condo to Satisfy Association Fees, Whether "Forced" –

HOMESTEAD EXEMPTION

Circumstances for Granting -

Osprey, Inc. v. Franklin County Board of Revision (September 11, 2019), BTA No. 2019-400 (Vol. 3/1185 ‖ 2)

Joe Ann Lucas v. Franklin County Board of Revision (September 30, 2019), BTA No. 2019-377 (Vol. 3/1279 – 1280)

HUD SALES

Impact of HUD Sale on Valuation –

Columbus City Schools Board of Education v. Franklin County Board of Revision (January 15, 2019), BTA No. 2018-181 (Vol. 3/0041 ‖ 4)

John Stadler v. Hamilton County Board of Revision (March 11, 2019), BTA No. 2018-881 (Vol. 3/0229 ‖ 5)

Columbus City Schools Board of Education v. Franklin County Board of Revision (August 6, 2019), BTA Nos. 2018-1262, 2018-1265 (Vol. 3/0820 – 0821 ‖ 5)

Shelby Hersh v. Cuyahoga County Board of Revision (August 27, 2019), BTA No. 2018-1129 (Vol. 3/1018 – 1019 ‖ 4)

Al Gammarino v. Hamilton County Board of Revision (September 5, 2019), BTA No. 2019-278 (Vol. 3/1138 ‖ 10)

341 Castlewood LLC v. Montgomery County Board of Revision (October 18, 2019), BTA Nos. 2018-987, 1339, 1341, 1343, 1344, 1345, 1351, 1352, 1353, 1355, 1356, 1357, 1359, 1362, 1445, 1446, 9898, 990 (Vol. 3/1363 ‖ 13)

As Rebuttable "Forced Sales" -

Columbus City Schools Board of Education v. Franklin County Board of Revision (August 6, 2019), BTA Nos. 2018-1262, 2018-1265 (Vol. 3/0820 -0821 ‖ 5)

LAND INSTALLMENT CONTRACT

See Valuation

LEASE

Impact of Lease on Value –

Leased Fee, Sale of –

Lease Termination Fee, Whether Included in Valuation - See Valuation

MANUFACTURED OR MOBILE HOMES

See Valuation

NEGATIVE PROPERTY CONDITIONS

Impact on Value –

Michael Isreal v. Franklin County Board of Revision (May 20, 2019), BTA No. 2018-480 (Vol. 3/0519 ⁋ 6)

John Stehli v. Cuyahoga County Board of Revision (May 20, 2019), BTA No. 2018-396 (Vol. 3/0522 ⁋ 6)

Al Gammarino v. Hamilton County Board of Revision (August 6, 2019), BTA Nos. 2018-1687, 2018-1688 (Vol. 3/0814 – 0815 ⁋ 17)

Kimberley S. Pettit v. Hamilton County Board of Revision (August 27, 2019), BTA No. 2018-1618 (Vol. 3/1014 – 1015 ⁋ 7)

OWNER

Opinion of Value By –

Richard R. Haynes v. Franklin County Board of Revision (April 8, 2019), BTA No. 2018-1287 (Vol. 3/0362 ⁋ 15)

Sherrie McGee v. Hamilton County Board of Revision (January 15, 2019), BTA No. 2018-780 (Vol. 3/0047)

1721 Radio LLC v. Montgomery County Board of Revision (March 28, 2019), BTA No. 2018-586 (Vol. 3/0286 ⁋ 10)

Michael Hippert v. Hamilton County Board of Revision (April 2, 2019), BTA No. 2018-1523 (Vol. 3/0315 ⁋ 11)

Jackson Local Schools Board of Education v. Stark County Board of Revision (April 2, 2019), BTA No. 2018-1323 (Vol. 3/0318 ⁋ 8)

David Pond v. Franklin County Board of Revision (April 4, 2019), BTA No. 2018-1127 (Vol. 3/0351)

Michael James Weir v. Wayne County Board of Revision (April 17, 2019), BTA No. 2018-1409 (Vol. 3/0395)

John W. White v. Montgomery County Board of Revision (May 21, 2019), BTA No. 2018-1406 (Vol. 3/0538)

2RMC Properties LLC v. Hamilton County Board of Revision (June 7, 2019), BTA Nos. 2018-1749, 1750, 1752, 1753 (Vol. 3/0590 ⁋ 3)

Helen L. Kaspar v. Franklin County Board of Revision (June 20, 2019), BTA No. 2018-2125 (Vol. 3/0633 - 0634)

Al Gammarino v. Hamilton County Board of Revision (August 6, 2019), BTA Nos. 2018-1687, 2018-1688 (Vol. 3/0814 ⁋ 16)

Blues Creek Golf, LLC v. Union County Board of Revision (August 8, 2019), BTA No. 2018-1781 (Vol. 3/0814 ⁋ 16)

Grandview Heights City Schools Board of Education v. Franklin County Board of Revision (August 12, 2019), BTA Nos. 2018-387, 2018-388 (Vol. 3/0855 ⁋ 16)

Columbus City Schools Board of Education v. Franklin County Board of Revision (August 19, 2019), BTA Nos. 2018-1256, 1260 (Vol. 3/943 ⁋ 7)

Wen Wen LLC v. Cuyahoga County Board of Revision (September 4, 2019), BTA No. 2019-89 (Vol. 3/1107 ⁋ 6)

Gravin Properties, LLC v. Franklin County Board of Revision (September 9, 2019), BTA No. 2018-564 (Vol. 3/1146)

William R. Jenkins v. Montgomery County Board of Revision (September 30, 2019), BTA No. 2018-2045 (Vol. 3/1290 ⁋ 7)

341 Castlewood LLC v. Montgomery County Board of Revision (October 18, 2019), BTA Nos. 2018-987, 1339, 1341, 1343, 1344, 1345, 1351, 1352, 1353, 1355, 1356, 1357, 1359, 1362, 1445, 1446, 9898, 990 (Vol. 3/1361 ⁋ 10)

Columbus City Schools Board of Education v. Franklin County Board of Revision (October 28, 2019), BTA No. 2018-1604 (Vol. 3/1403 ⁋ 9)
Robert Jacops v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2019-325 (Vol. 3/1618 – 1619 ⁋ 8)

NR4C Ventures, Ltd. v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2018-1768 – 1771 (Vol. 3/1632)

Ilvio M. Zaccardelli v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2019-544 (Vol. 3/1651)

Factors in Weight and Credibility of -

Factors in Weight and Credibility Where Supported by Appraisal –

Abbey Church Village (TC2) Housing Limited Partnership v. Franklin County Board of Revision (January 28, 2019), BTA No. 2017-1055 (Vol. 3/0104)

Lowe's Home Centers, LLC v. Cuyahoga County Board of Revision (February 26, 2019), BTA No. 2017-39 (Vol. 3/0169)

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 11, 2019), BTA Nos. 2017-278, 279, 280, 293, 295, 296, 297, 298 (Vol. 3/0235)

New Albany-Plain Local Schools Board of Education v. Franklin County Board of Revision (March 26, 2019), BTA No. 2017-1083 (Vol. 3/0264)

Michael James Weir v. Wayne County Board of Revision (April 17, 2019), BTA No. 2018-1409 (Vol. 3/0395)

Frank Cook Senior Housing, L.P. v. Muskingum County Board of Revision (May 13, 2019), BTA No. 2016-1043 (Vol. 3/0465)

Buckeye Community Twenty One LP v. Muskingum County Board of Revision (May 20, 2019), BTA No. 2016-1047 (Vol. 3/0531 ¶ 11)

Fargo Industrial Properties Ltd. V. Cuyahoga County Board of Revision (July 5, 2019), BTA Nos. 2018-126, 2018-136 (Vol. 3/0675)

Jeffco Resources, Inc. v. Belmont County Board of Revision (July 1, 2019), BTA Nos. 2017-1528, 2017-1529 (Vol. 3/0720)

Kettering City Schools Board of Education v. Montgomery County Board of Revision (August 6, 2019), BTA No. 2017-2053 (Vol. 3/0825)

Grandview Heights City Schools Board of Education v. Franklin County Board of Revision (August 12, 2019), BTA Nos. 2018-387, 2018-388 (Vol. 3/0854)

Forest Edge LLC v. Hancock County Board of Revision (September 11, 2019), BTA No. 2018-1370 (Vol. 3/1191)

Bainbrook/Laurel Springs Homeowners Association v. Geauga County Board of Revision (September 30, 2019), BTA No. 2018-1444 (Vol. 3/1295 ¶ 6)

Columbus City Schools Board of Education v. Franklin County Board of Revision (October 8, 2019), BTA No. 2018-2105 (Vol. 3/1328)

Unadjusted Comparable Sales Data –

Richard R. Haynes v. Franklin County Board of Revision (April 8, 2019), BTA No. 2018-1287 (Vol. 3/¶ 11)

Westerville City Schools Board of Education v. Franklin County Board of Revision (February 5, 2019), BTA Nos. 2018-248, 2018-249 (Vol. 3/0138 – 0139 ¶ 8)

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 4, 2019), BTA No. 2018-253 (Vol. 3/0201)

John Stadler v. Hamilton County Board of Revision (March 11, 2019), BTA No. 2018-881 (Vol. 3/229 ¶ 5)

1721 Radio LLC v. Montgomery County Board of Revision (March 28, 2019), BTA No. 2018-586 (Vol. 3/0286 ¶ 8)

Gloria J. Hill v. Hamilton County Board of Revision (April 3, 2019), BTA No. 2018-1392 (Vol. 3/339 ¶ 9)

Richard R. Haynes v. Franklin County Board of Revision (April 8, 2019), BTA No. 2018-1287 (Vol. 3/0361 ¶ 11)

Gary L. Pence v. Greene County Board of Revision (April 29, 2019), BTA Nos. 2018-980, 2018-981 (Vol. 3/0414)

Tammy Freer v. Cuyahoga County Board of Revision (May 20, 2019), BTA No. 2018-804 (Vol. 3/0513 ¶ 6)

Anthony Talley v. Butler County Board of Revision (May 20, 2019), BTA No. 2018-690 (Vol. 3/0516)

2RMC Properties LLC v. Hamilton County Board of Revision (June 7, 2019), BTA Nos. 2018-1749, 1750, 1752, 1753 (Vol. 3/591/¶ 8)

Blues Creek Golf LLC v. Union County Board of Revision (August 8, 2019), BTA No. 2018-1781 (Vol. 3/836)

Grandview Heights City Schools Board of Education v. Franklin County Board of Revision (August 12, 2019), BTA Nos. 2018-387, 2018-388 (Vol. 3/0855 – 0856)

Columbus City Schools Board of Education v. Franklin County Board of Revision (May 31, 2019), BTA Nos. 2017-615, 616, 668, 669 (Vol. 3/1153 – 1154 ¶ 9)

Peter J. Mitchell v. Cuyahoga County Board of Revision (October 8, 2019), BTA No. 2019-452 (Vol. 3/1322 ¶ 5)

Whether Former Owner May File Complaint at BOR –

OWNER-OCCUPANCY TAX REDUCTION

Circumstances for Granting -

Osprey, Inc. v. Franklin County Board of Revision (September 11, 2019), BTA No. 2019-400 (Vol. 3/¶ 2)

Recoupment Of –

REAL ESTATE BROKER

Testimony on Value By –

Al Gammarino v. Hamilton County Board of Revision (August 6, 2019), BTA Nos. 2018-1687, 2018-1688 (Vol. 3/¶ 16)

Ravenna School District Board of Education v. Portage County Board of Revision (January 18, 2019), BTA No. 2017-1497 (Vol. 3/0075)

1721 Radio LLC v. Montgomery County Board of Revision (March 28, 2019), BTA No. 2018-586 (Vol. 3/0286 ¶ 9)

Gloria J. Hill v. Hamilton County Board of Revision (April 3, 2019), BTA No. 2018-1392 (Vol. 3/0338 ¶ 9\7)

341 Castlewood LLC v. Montgomery County Board of Revision (October 18, 2019), BTA Nos. 2018-987, 1339, 1341, 1343, 1344, 1345, 1351, 1352, 1353, 1355, 1356, 1357, 1359, 1362, 1445, 1446, 9898, 990 (Vol. 3/1361 ⁋ 9)

REALTOR

Whether "Realtor" Can File Complaint for Owner –

RECEIVER

Whether Sale from Receiver May Be Considered Arm's Length –

RECONSIDERATION

Whether BOR Has Authority to Reconsider its Decisions -

REMISSION OF LATE PAYMENT PENALTY

Under What Circumstances –

Folzenlogen Properties LLC v. Hamilton County Board of Revision (April 5, 2019), BTA No. 2018-1597 (Vol. 3/0353 ⁋⁋ 4, 5)

Elizabeth Ann Harnist v. Butler County Board of Revision (April 8, 2019), BTA No. 2018-1777 (Vol. 3/0355 ⁋ 5)

Hillview Farms, Inc. v. Union County Board of Revision (April 8, 2019), BTA No. 2018-1671 (Vol. 3/0356 – 0358 ⁋⁋ 2 - 8)

Kathryn A. Monnin v. Franklin County Board of Revision (April 30, 2019), BTA No. 2018-1995 (Vol. 3/0416 – 0417 ⁋⁋ 2 - 6)

Fred Green v. Wood County Board of Revision (May 20, 2019), BTA No. 2018-2054 (Vol. 3/0486 – 0487 ⁋⁋ 2, 3)

Joseph Little – MMRC LLC v. Cuyahoga County Board of Revision (July 5, 2019), BTA Nos. 2018-2190, 2018-2192 (Vol. 3/0660 – 0661 ⁋ 4)

Scott Holthaus v. Franklin County Board of Revision (July 9, 2019), BTA No. 2018-2160 (Vol. 3/0691 – 0692 ⁋⁋ 3, 4, 5)

Gary W. Ramsey & Bobbie Simmerman v. Cuyahoga County Board of Revision (December 23, 2019), BTA No. 2019-512 (Vol. 3/1578 – 1579 ⁋⁋ 4, 5, 6)

David Poole v. Franklin County Board of Revision (December 23, 2019), BTA No. 2019-610 (Vol. 3/1586 – 1588 ⁋⁋ 2, 3, 4)

Marilyn M. Schumick v. Franklin County Board of Revision (December 31, 2019), BTA No. 2019-619 (Vol. 3/1599 – 1601 ⁋⁋ 2, 3, 4)

SECTION 8 HOUSING PAYMENTS

Impact on Value of Property –

SHERIFF'S SALES

See Valuation

SHOPPING CENTERS

See Valuation

SHORT SALE

See Valuation

STATUTORY RECORD

When Unintelligible -

What Should Be Included In -

STIPULATED VALUE

Board of Revision -

Is BOR Bound by Stipulated Value –

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 4, 2019), BTA No. 2018-253 (Vol. 3/0201 ⁋ 12)

2RMC Properties LLC v. Hamilton County Board of Revision (June 7, 2019), BTA Nos. 2018-1749, 1750, 1752, 1753 (Vol. 3/0591 ‖ 7)

Whether Carried Over Into Next Year –

TRIENNIAL UPDATE

Application of Update Percentage –

UNAUTHORIZED PRACTICE OF LAW

Representation by Non-Attorney "Complainant's Agent" –

Miamisburg City Schools Board of Education v. Montgomery County Board of Revision (May 2, 2019), BTA No. 2018-1646 (Vol. 3/0427 ‖‖ 5, 6, 7)

West Carrollton City Schools Board of Education v. Montgomery County Board of Revision (May 15, 2019), BTA No. 2018-1788 (Vol. 3/0480 – 0481 ‖‖ 5, 6)

Jones Holdings LLC v. Montgomery County Board of Revision (June 3, 2019), BTA No. 2018-2028 (Vol. 3/0566 ‖ 4)

Dayton City Schools Board of Education v. Montgomery County Board of Revision (October 15, 2019), BTA No. 2019-45 (Vol. 3/1340 – 1341 ‖‖ 3, 4)

Lavalle Michelle v. Cuyahoga County Board of Revision (November 20, 2019), BTA No. 2019-1861 (Vol. 31462 – 1463 /‖ 2)

Yes We Can Community Homes, Inc. v. Allen County Board of Revision (December 11, 2019), BTA No. 2019-2065 (Vol. 3/1513 ‖ 3)

Representation by Family Member Other Than Spouse -

Lavalle Michelle v. Cuyahoga County Board of Revision (November 20, 2019), BTA No. 2019-1861 (Vol. 3/1462 – 1463 ‖ 2)

VALUATION

Allocation of Purchase Price Between Real and Personal Property –

American Acquisitions Corp. v. Hancock County Board of Revision (May 1, 2019), BTA No. 2018-524 (Vol. 3/0423 -0424 ‖‖ 8 - 11)

Brightstone Muirwood, LLC v. Franklin County Board of Revision (June 3, 2019), BTA No. 2017-1878 (Vol. 3/0571 ⁋ 9)

JTB La Bella Vita LLC v. Montgomery County Board of Revision (July 5, 2019), BTA No. 2018-2059 (Vol. 3/0665 – 0666 ⁋⁋ 6, 7)

Auction, Impact of Sale at –

Settlement Statement Showing Sale by Auction, But No Other Evidence –

Auction, Online –

Rami Nwaisser v. Montgomery County Board of Revision (July 18, 2019), BTA Nos. 2019-4, 2019-22 (Vol. 3/0744 – 0755 ⁋ 4)

Bedford Rule –

Jackson Local Schools Board of Education v. Stark County Board of Revision (May 31, 2019), BTA No. 2017-1895 (Vol. 3/0563 ⁋⁋ 4, 5, 6)

Westerville City Schools Board of Education v. Franklin County Board of Revision (June 3, 2019), BTA No. 2018-895 (Vol. 3/0568 ⁋ 4)

Bulk (Multiple) Property Sales, Allocation of Purchase Price –

Wells Building LLC v. Ross County Board of Revision (August 29, 2019), BTA No. 2018-1635 (Vol. 3/1058 – 1059 ⁋⁋ 8, 9)

Columbus City Schools Board of Education v. Franklin County Board of Revision (November 19, 2019), BTA Nos. 2017-1325, 1326, 1328 – 1333, 136 – 1338 (Vol. 3/1457 – 1458)

Akron City Schools Board of Education v. Summit County Board of Revision (January 2, 2019), BTA No. 2017-1714 (Vol. 3/0016)

Burden of Proof in Disputing Allocation -

A & I Property Management Holdings and Development, LLC v. Stark County Board of Revision (May 20, 2019), BTA No. 2018-950 (Vol. 3/0498 - 0499)

Carry Forward of Valuation –

Robert Jacops v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2019-325 (Vol. 3/1617 ⁋ 5)

Lisa M. Rudoph v. Clermont County Board of Revision (March 4, 2019), BTA No. 2018-1034 (Vol. 3/0208 – 0209 ¶ 10)

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 4, 2019), BTA No. 2018-253 (Vol. 3/0201 ¶ 12)

William S. Johnson v. Greene County Board of Revision (March 20, 2019), BTA No. 2018-912 (Vol. 3/0507 ¶ 10)

Computer Assisted Mass Appraisal (CAMA) Valuations, Use of at BOR –

William Johnson v. Greene County Board of Revision (May 20, 2019), BTA No. 2018-912 (Vol. 3/0508 ¶ 14)

Construction Costs –

Deed Restrictions, Impact of on Valuation -

Bainbrook/Laurel Springs Homeowners Association v. Geauga County Board of Revision (September 30, 2019), BTA No. 2018-1444 (Vol. 3/1294 – 1296 ¶¶ 5, 7)

Demolition After Purchase of Property, Impact Of –

Yale Homes, LLC v. Franklin County Board of Revision (July 1, 2019), BTA Nos. 2018-801, 2018-802 (Vol. 3/0650 ¶ 10)

Discounted Cash Flow Analysis -

Financial Condition of Owner, Impact Of –

Fraud in the Inducement to Purchase, Effect on Value -

General Economic Decline in Neighborhood, Impact Of -

Pat Dinh v. Clark County Board of Revision (January 2, 2019), BTA No. 2018-862 (Vol. 3/0008 ¶ 5)

Government Subsidized Housing, How to Value –

Income Approach, Market vs. Actual Rents

Inflation as Valuation Method -
Land Installment Contract –

Cleveland Municipal Schools Board of Education v. Cuyahoga County Board of Revision (September 17, 2018), BTA No. 2017-2159 (Vol. 3/0130)

Gorodyuk Estate LLC v. Franklin County Board of Revision (July 16, 2019), BTA No. 2018-1270 (Vol. 3/0740 - 0741)

Jackson Local Schools Board of Education v. Stark County Board of Revision (May 20, 2019), BTA No. 2017-1894 (Vol. 3/0528 ‖ 3)

Lease Termination Fee, Whether Included in Valuation

Westerville City Schools Board of Education v. Franklin County Board of Revision (February 28, 2019), BTA No. 2017-1960 (Vol. 3/0181 ‖ 10)

Cleveland Municipal Schools Board of Education v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2017-2156 (Vol. 3/1645)

Listing Price, Weight Given To in Valuation –

Pat Dinh v. Clark County Board of Revision (January 2, 2019), BTA No. 2018-862 (Vol. 3/0008 ‖ 4)

1721 Radio LLC v. Montgomery County Board of Revision (March 28, 2019), BTA No. 2018-586 (Vol. 3/0290 – 0291 ‖ 37)

Jackson Local Schools Board of Education v. Stark County Board of Revision (April 2, 2019), BTA No. 2018-1323 (Vol. 3/0317 ‖ 6)

William R. Jenkins v. Montgomery County Board of Revision (September 30, 2019), BTA No. 2018-2045 (Vol. 3/1290 ‖ 6)

Robert Jacops v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2019-325 (Vol. 3/1619 ‖ 9)

Cuyahoga Falls City Schools Board of Education v. Summit County Board of Revision (July 26, 2019), BTA No. 2018-1320 (Vol. 3/0767)

Manufactured or Mobile Homes –

Walter O. Balo, Jr. v. Licking County Board of Revision (September 4, 2019), BTA No. 2018-1092 (Vol. 3/1113)

James M. Lukacsko v. Belmont County Board of Revision (April 2, 2019), BTA No. 2018-924 (Vol. 3/0309 ‖ 5)

Multiple Sales Near the Tax Lien Date –

Overpayment for Purchase of Property, Impact of -

Kevin Robitaille v. Franklin County Board of Revision (March 26, 2019), BTA No. 2018-1295 (Vol. 3/0254 – 0255 ⁋ 10)

Yale Homes, LLC v. Franklin County Board of Revision (July 1, 2019), BTA Nos. 2018-801, 2018-802 (Vol. 3/0650 ⁋ 10)

Prior Auditor's Valuations, Use of in Valuation at BOR -

William Johnson v. Greene County Board of Revision (May 20, 2019), BTA No. 2018-912 (Vol. 3/0507 – 0508 ⁋ 12)

Columbus City Schools Board of Education v. Franklin County Board of Revision (May 31, 2019), BTA Nos. 2017-615, 616, 668, 669 (Vol. 3/1155 ⁋ 11)

Recency of Sale, Factors in Determining -

Wen Wen LLC v. Cuyahoga County Board of Revision (September 4, 2019), BTA No. 2019-89 (Vol. 3/1106 – 1107 /⁋ 5)

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 4, 2019), BTA Nos. 2018-255, 2018-256 (Vol. 3/0196 – 0197 ⁋⁋ 6 - 8)

Kevin Robitaille v. Franklin County Board of Revision (March 26, 2019), BTA No. 2018-1295 (Vol. 3/0254 ⁋ 7)

1763 Shiloh, LLC v. Montgomery County Board of Revision (March 28, 2019), BTA Nos. 2018-1360, 2018-2294 (Vol. 3/0272 ⁋ 5)

Michael Hippert v. Hamilton County Board of Revision (April 2, 2019), BTA No. 2018-1523 (Vol. 3/0314 ⁋ 7)

Behzad Vedaie Partner in MV & AP v. Franklin County Board of Revision (April 5, 2019), BTA No. 2018-525 (Vol. 3/0343 ⁋⁋ 4, 6)

Dave L. Schroyer (CRA-DA Properties LLC v. Mercer County Board of Revision (April 8, 2019), BTA No. 2018-1273 (Vol. 3/0364 ⁋ 7)

1375 Cory LLC v. Montgomery County Board of Revision (April 9, 2019), BTA No. 2018-1419 (Vol. 3/0372 ⁋ 4)

Stanley A. Young v. Cuyahoga County Board of Revision (April 29, 2019), BTA No. 2018-708 (Vol. 3/0411 ⁋ 5)

ECC-Center, LLC v. Hamilton County Board of Revision (May 6, 2019), BTA No. 2018-1977 (Vol. 3/0432 ⁋ 13)

Neil Boon v. Hamilton County Board of Revision (May 20, 2019), BTA No. 2018-1884 (Vol. 3/0489 ⁋ 4)

Akron City Schools Board of Education v. Summit County Board of Revision (June 4, 2019), BTA No. 2018-1094 (Vol. 3/0576 ⁋ 3)

2RMC Properties LLC v. Hamilton County Board of Revision (June 7, 2019), BTA Nos. 2018-1749, 1750, 1752, 1753 (Vol. 3/0590 ⁋ 3)

Columbus City Schools Board of Education v. Franklin County Board of Revision (August 19, 2019), BTA Nos. 2018-1256, 1260 (Vol. 3/0941 ⁋ 4)

Columbus City Schools Board of Education v. Franklin County Board of Revision (May 21, 2019), BTA No. 2017-1184 (Vol. 3/0541 ⁋ 6)

Akron City Schools Board of Education v. Summit County Board of Revision (June 4, 2019), BTA No. 2018-1111 (Vol. 3/0574 ⁋ 3)

Maple Park Courts LLC v. Cuyahoga County Board of Revision (August 19, 2019), BTA No. 2018-1028 (Vol. 3/0951 – 0952 ⁋ 5)

Akron City Schools Board of Education v. Summit County Board of Revision (August 28, 2019), BTA No. 2018-1108 (Vol. 3/1030 ⁋ 3)

Akron City Schools Board of Education v. Summit County Board of Revision (September 4, 2019), BTA No. 2018-1074 (Vol. 3/1117 – 1118 ⁋ 4)

Worthington City Schools Board of Education v. Franklin County Board of Revision (September 12, 2019), BTA No. 2017-1588 (Vol. 3/1205 – 1206 ⁋ 9)

Al Gammarino v. Hamilton County Board of Revision (September 30, 2019), BTA No. 2018-622, 753, 938-946, 972, 973, 974, 1301(Vol. 3/1305 – 1306 ⁋ 8)

4103 Crest LLC v. Montgomery County Board of Revision (October 18, 2019), BTA Nos. 2018-2289, 1338, 1342, 1349, 2290, 2292 (Vol. 3/1353 – 1354 ⁋ 5)

Columbus City Schools Board of Education v. Franklin County Board of Revision (October 28, 2019), BTA No. 2018-1604 (Vol. 3/1401 ⁋ 6)

William Tomlinson v. Cuyahoga County Board of Revision (December 31, 2019), BTA Nos. 2019-606, 2019-607 (Vol. 3/1603 – 1604 ⁋ 4)

Greg Nelson Embassy Builders, Inc. v. Lorain County Board of Revision (December 31, 2019), BTA No. 2019-701 (Vol. 3/1613 ⁋ 4)

Land Installment Contract, Recency –

Gorodyuk Estate LLC v. Franklin County Board of Revision (July 16, 2019), BTA No. 2018-1270 (Vol. 3/0740 – 0741 ⁋ 6)

Seller Financing of Sale, Impact on Valuation –

Beavercreek City Schools Board of Education v. Greene County Board of Revision (August 19, 2019), BTA No. 2018-1314 (Vol. 3/0937 ⁋ 10)

Plain Local Schools Board of Education v. Stark County Board of Revision (October 28, 2019), BTA No. 2017-1887 (Vol. 3/1408 – 1409 ⁋ 8)

GST Property Management LLC v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2019-172 (Vol. 3/1610 – 1611 ⁋ 5)

Sheriff's Sales –

Jason Augenstein v. Clark County Board of Revision (March 4, 2019), BTA No. 2018-1253 (Vol. 3/0205 ⁋ 10)

John Stadler v. Hamilton County Board of Revision (March 11, 2019), BTA No. 2018-881 (Vol. 3/0228 – 0229 ⁋ 5)

Shopping Centers –

Income vs. Sales Comparable Approach -

Short Sales –

Subsidized Housing, Impact on Value –

Tax Abatement, Impact on Value –

Unaccepted Offers to Purchase –

Howard Sullivan v. Hamilton County Board of Revision (May 1, 2019), BTA No. 2018-947 (Vol. 3/0420 – 0421 ⁋ 7)

William R. Jenkins v. Montgomery County Board of Revision (September 30, 2019), BTA No. 2018-2045 (Vol. 3/1290 ⁋ 6)

Robert Jacops v. Cuyahoga County Board of Revision (December 31, 2019), BTA No. 2019-325 (Vol. 3/1619 ¶ 9)

Update Percentage, Impact of on Previously Redetermined Value -

Valuation of Neighboring Properties –

VETERAN'S ADMINISTRATION SALES

Impact of VA Sale on Valuation –

ZILLOW/INTERNET

Whether Zillow/Internet Information is Given Any Weight –

Columbus City Schools Board of Education v. Franklin County Board of Revision (March 4, 2019), BTA No. 2018-253 (Vol. 3/0201 ¶ 10)

Beachwood City Schools Board of Education v. Cuyahoga County Board of Revision (May 28, 2019), BTA No. 2017-663 (Vol. 3/0552 ¶ 9)

Columbus City Schools Board of Education v. Franklin County Board of Revision (May 31, 2019), BTA Nos. 2017-615, 616, 668, 669 (Vol. 31154 /¶ 10)

VOLUME 3
BTA DECISIONS

THIS PAGE LEFT INTENTIONALLY BLANK

OHIO BOARD OF TAX APPEALS

ROBIN D. ARNETT, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-935

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBIN D. ARNETT
OWNER
1606 CAROLINA ST
MIDDLETOWN, OH 45044

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Wednesday, January 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel Q6542-044-000-032, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $50,560. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $25,000. At the BOR hearing on the matter, the property owner submitted photographs and repair estimates to argue that the condition of his home necessitated a reduction to the subject property's value. The BOR voted to reduce the subject property's value to $30,000 and subsequently issued a written decision to that effect. This appeal ensued. None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board.

While this matter was pending for decision, the property owner submitted written argument that is replete with factual assertions to support his contention that the subject property has been overvalued, as well as additional repair estimates. He reiterated his argument that the condition of his home necessitated a reduction to the subject property's value and that the repair estimates demonstrated that.

Before we address the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the property owner submitted written argument that made a number of factual assertions that were not

previously discussed during the BOR hearing. Because the factual assertions were clearly offered for the truth of the matter asserted, we will not consider them in our analysis. See, e.g., *Dellick v. Eaton Corp.*, 5th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). Furthermore, we will not consider the repair estimates attached to the written argument because they were not provided at the BOR hearing or at a hearing before this board. See *Neon Rave, LLC v. Franklin Cty. Bd. of Revision* (Apr. 19, 2016), BTA No. 2015-1298, unreported at 2 ("As noted, the appellant did not request a hearing before this board. However, it attached written argument and a number of documents to its notice of appeal. Because the documents were produced outside the hearing context and were clearly offered for their evidentiary value, we cannot consider them."). Accord *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

Upon review, we find that the property owner has failed to submit competent and probative evidence of the subject property's value. He primarily relied upon the condition of his home, i.e., the water damage and leaking pipes, to argue that the subject property's value should be reduced. The property owner failed to quantify how much the defects negatively impacted the subject property's value. For example, is the subject property's value diminished by $1,000 or $10,000 as the result of water damage? In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev*., 75 Ohio St.3d 227, 228, *** (1996) (stating '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.) Id. at ¶7.

Similarly, we do not find the repair estimates to be persuasive. We have repeatedly held that dollar-for-dollar costs do not necessarily correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Rev*., 75 Ohio St.3d 227 (1996); *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). For example, there is no indication that paying $25,000 to fix the plumbing issues in the house would result in a $25,000 increase in the subject property's value.

Having concluded that the property owner's argument and evidence are insufficient, we now turn to the BOR's decision to reduce the subject property's value to $30,000. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶15 ("It is clear from the BTA's decision that it failed to conduct an independent review of the evidence to determine the value of the subject property. *** Instead, the BTA merely deferred to the BOR, treating the BOR's assignment of value as presumptively valid."). We have already concluded that the evidence presented to the BOR was not competent and probative evidence of the subject property's value. As a result, such evidence could not have been a proper basis for the BOR's decision to reduce the subject property's value. Furthermore, a review of the BOR decision hearing indicates that the BOR reduced the subject property's value based upon a study of "average to better" comparable sales, deducting $30,000 to $35,000 for the cost to remediate the problems with the house and then applying a discount to account for a new owner remediating the problems. The record is devoid of the basis for the BOR's conclusion that the subject property would have an "after repair value" of $70,000, that the cost to remediate the problems with the home would cost $30,000 to $35,000, particularly when the BOR concluded that the repair estimates submitted by the appellant were too high, and that there should be some further reduction based upon an

unquantified discount. We are unable to replicate the BOR's decision. See *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶ 35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it."). It should be noted that it appears that the auditor considered the subject property's "average" condition, as noted on the property record card, in valuing the subject property at $50,000, which is below the range of the "average to better" comparable sales that the BOR alleged that it relied on, i.e., $68,600 to $80,000.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the property owner failed to provide competent and probative evidence of the subject property's value and, as a result, the BOR's decision is unsupported. Because of the insufficiency of the evidence in the record, we must reinstate the subject property's initially assessed value. See, *South-Western City School Dist.*, supra, at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 35. Here, the BTA assigned a value that *** could be achieved only through artifice.") (Parallel citation omitted.)

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

TRUE VALUE

$50,560

TAXABLE VALUE
$17,700

OHIO BOARD OF TAX APPEALS

PAT DINH, (et. al.), Appellant(s), vs. CLARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-862 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAT DINH
OWNER
1109 UPPER VALLEY PIKE
SPRINGFIELD , OH 45504

For the Appellee(s) - CLARK COUNTY BOARD OF REVISION
Represented by:
WILLIAM D. HOFFMAN
ASSISTANT PROSECUTING ATTORNEY
CLARK COUNTY
50 EAST COLUMBIA STREET, SUITE 449
SPRINGFIELD, OH 45502

NORTHWEST CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Wednesday, January 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner Pat Dinh appeals to this board from a decision of the Clark County Board of Revision ("BOR") determining the value of parcel number 055-06-00018-409-042 for tax year 2017. No party to this appeal requested a hearing before this board at which to present new evidence. See Ohio Adm. Code 5717-1-16(A). We therefore proceed to decide the matter upon the notice of appeal and the statutory transcript certified by the county auditor pursuant to R.C. 5717.01. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

[2] The county auditor initially valued the subject property at $251,140 for tax year 2017. The appellant property owner filed a complaint seeking a decrease in value to $150,000, indicating the property had been listed for sale for two years and no offers had been received. The owner also asserted on the complaint that property values along the subject's street (Upper Valley Pike) had declined tremendously in the past ten years. Although the owner did not appear at the BOR hearing, countercomplainant Northwestern Local School District Board of Education appeared through counsel and argued in support of maintaining the

auditor's value in the absence of evidence supporting a different value. The BOR ultimately agreed, and issued a decision maintaining the auditor's value of $251,140. The owner appealed to this board, again requesting a decrease in value to $150,000.

[3] In challenging the valuation of real property, "the appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. Although the best evidence of value is a recent, arm's-length sale of the subject property, see *Terraza 8¸ L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, there is no indication that the subject property here has recently sold.

[4] Appellant appears to rely solely on his unsuccessful efforts to sell the property. However, we do not find the listing price to be indicative of the property's value. As the 10th District Court of Appeals acknowledged in *Kaiser v. Franklin Cty. Aud.*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, at ¶12, "a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." Indeed, "[t]his board has held on many occasions that the price at which a property is 'listed' is not necessarily indicative of market value and also does not constitute the 'outer limit' at whichthe property would sell." *Moloney v. Montgomery Cty. Bd. of Revision* (Aug. 10, 2010), BTA No. 2008-V-967, unreported, at 4. Further, we have previously recognized that "[t]he fact that the property has been listed but remains unsold at the asking price is not persuasive in determining the value for the property." *Jones v. Montgomery Cty. Bd. of Revision* (June 24, 2005), BTA No. 2004-J-804, unreported, at 4. We therefore do not find appellant's efforts to sell the property to be probative of the property's value.

[5] Appellant also makes a conclusory statement on the complaint about a general decline in values along the Upper Valley Pike corridor. However, he provides no data to support such statement. An owner is entitled to provide an opinion of a property's worth, *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987), but for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). See also *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996) ("there is no requirement that the finder of fact accept [the owner's value] as the true value of the property."). Appellant has provided no market data or appraisal report quantifying any decline in value attributable to the subject property's location.

[6] Based upon the foregoing, we find the appellant property owner failed to meet his burden to prove a value different from the auditor's valuation. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$251,140

TAXABLE VALUE

$87,900

OHIO BOARD OF TAX APPEALS

SCIOTO RIVER DEVELOPMENT, LLC, (et. al.),

Appellant(s),

vs.

PICKAWAY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-483

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SCIOTO RIVER DEVELOPMENT, LLC
Represented by:
MONICA MAHTANI
1650 DES PERES ROAD, STE. 303
ST. LOUIS, MO 63141

For the Appellee(s) - PICKAWAY COUNTY BOARD OF REVISION
Represented by:
JUDY C. WOLFORD
PROSECUTING ATTORNEY
PICKAWAY COUNTY
203 SOUTH SCIOTO STREET
CIRCLEVILLE, OH 43113

Entered Wednesday, January 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels L27-0-001-00-542-00 and D12-0-003-00-305-04, for tax year 2017. We proceed to consider this matter based upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The auditor initially valued the subject property, an "old power plant site," at $1,335,660. Statutory Transcript at Property Record Card. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $125,000. The complaint noted that the subject property had been the subject of a $469,700.07 transfer in June 2016. Although the BOR scheduled the matter for a merit hearing, no one appeared on behalf of the property owner. The BOR hearing notes include the following:

> "Scioto River Development LLC was notified by certified mail of their hearing time and date at 2:00 pm. on June 1, 2018. No one appeared on behalf of Scioto River Development LLC for the hearing. We received no correspondence indicating that they would not be attending, nor a request to reschedule. The Board did review the information that was provided with the complaint form. There was a statement that was included summarizing the sale of the property. The complaint form indicates that the purchase price was $469,700.07; however the Auditor's records indicate that the sale price was $2,485,000 when the property was transferred on July 6, 2016. The Board had several questions as to the difference in the purchase price as reported

> on the complaint form and the actual conveyance form. There was a line on the statement that indicated the conveyance fee to the Pickaway County Auditor was $7,457. The payment of that amount did reflect a purchase price of $2,485,000. The conveyance fee in Pickaway County is $3 per thousand of the sale price."

The BOR voted to retain the subject property's initially assessed value, and subsequently issued a written decision to that effect. This appeal ensued and the property owner again requested that the subject property be revalued at $125,000. None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. We will, therefore, evaluate the sufficiency of the property owner's evidence and the propriety of the BOR's decision.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

We begin our analysis with the sale of the subject property. There is conflicting information in the record regarding the price at which the subject property transferred. The property owner's complaint claims that it transferred for $469,700.07 in June 2016. The settlement statement, provided with the complaint, indicates that it transferred, with one other parcel located in Pickaway County and at least one parcel located in Franklin County, and non-realty items, for more than $5,480,000 *due from the seller* (which would amount to a negative sale price of $5,480,000) in June 2016. The property record card indicates that it transferred, potentially with an unknown number of other parcels, for $2,485,000 in July 2016. No one testified at the BOR hearing to clarify and explain the details of the sale of the subject property. As such, we are left to speculate about the facts and circumstances of the sale, what items were actually included in the sale, and the amount of the sale. We have previously held that an owner is required to submit more substantial evidence of a sale when the record contains conflicting information about the minimal details of a sale and/or when proponents of a sale question the basic facts surrounding such sale. See, *Nexus Realty, LLC v. Montgomery Cty. Bd. of Revision* (Feb. 28, 2018), BTA No. 2017-13, unreported. Compare *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402.

A review of the settlement statement showcases the conflicting information about the alleged sale price of the subject property. As an initial matter, we note that the settlement statement fails to provide a "[c]ontract sales price." We acknowledge that the settlement statement includes the same $469,700.07 value that was noted as the sale price on the complaint. However, we discern that this value was derived from the "Credit" column for the "Buyer," and there is nothing in that column to demonstrate that the $469,700.07 value was allocated to the parcels at issue in this matter. In fact, the $469,700.07 value was allocated to a number of other items, not the subject property. For example, that value included $375,000 allocated to "Mobilization Fee" to the property owner. What does this fee relate to and how does it relate to the value of the subject property? Because no one testified at the BOR hearing, we are left to speculate. As a result, we cannot conclude that the subject property sold for $469,700.07.

Moreover, although there was no testimony about the sale, a review of the settlement statement indicates that environmental liabilities may have been included in the subject sale with substantial monies due from the seller, i.e., approximately $5,480,000. Although the record is devoid of the facts and circumstances of the subject sale in this matter, we have recently considered the transfer of property at the site of a former a coal-fired, electric power plant, by which AEP Generation Resources, Inc. transferred the environmental

liabilities to a new owner, which resulted in a negative sale price. In *Muskingum River Development, LLC v. Morgan Cty. Bd. of Revision* (Oct. 12, 2018), BTA Nos. 2016-2244 et al., unreported, we rejected the property owner's claimed sale price, in part, because of the complexities of the sale. We held that:

> "While normally this board would accept the parties' allocation of such a sale price, here, we question the parties' allocation. The facts and circumstances of the overall sale, e.g., the environmental remediation agreement between the buyer and seller and the 'negative' purchase price, are so complex that we are not able to determine the entirety of the transaction[.]" Id. at 3.

Although the record in this matter is much less developed than the record in *Muskingum River*, we can ascertain that the subject sale potentially suffers from the same complexities and we similarly conclude that subject sale should be disregarded. See *Consol. Aluminum Corp. v. Monroe Cty. Bd. of Revision*, 66 Ohio St.2d 410 (1981).

We must, likewise, reject the $2,485,000 sale in July 2016, as noted on the property record card. The property record card notes that the sale included multiple parcels and the record is devoid of any evidence to demonstrate how much of the $2,485,000 sale price was allocated to the parcels at issue in this matter. Though the BOR hearing notes that it considered that the conveyance fee statement, to confirm the $2,485,000 sale price, the conveyance fee statement is not in the record before us. As such, we are unable to confirm the sale price, as well as the number of parcels that were included in the subject sale.

Furthermore, there is no evidence to support a decision to value the subject property at $125,000 requested on the complaint and the notice of appeal. The property owner failed to provide any indication of how it arrived at that value and nothing in the settlement statement provided with the complaint supports valuing the subject property at $125,000.

We also note that the property owner included a note with the complaint, which stated that the "[p]roperty no longer has any structures of value on site. Closing statement will highlight the buyer received monies to transfer environmental liabilities from the seller." Again, no one testified at the BOR hearing to provide information about *when* the structures were razed. The property record card contains a notation, "NC 17 BLDGS RAZED," which suggests that the structures were razed in tax year 2017, likely after the tax lien date of January 1, 2017. As such, the property owner's bare assertion does not satisfy its burden to provide competent and probative evidence of the subject property's value. See *Blatt v. Hamilton Cty. Bd. of Revision*, 123 Ohio St.3d 428, 2009-Ohio-5260.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon the foregoing, we must conclude that the property owner failed to satisfy its evidentiary burden before the BOR and before this board. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER L27-0-001-00-542-00

TRUE VALUE

$84,980

TAXABLE VALUE

$29,740

PARCEL NUMBER D12-0-003-00-305-04

TRUE VALUE

$1,250,680

TAXABLE VALUE

$437,740

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1714
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

WENDY'S PROPERTIES LLC
Represented by:
LAUREN M. JOHNSON
VORYS, SATER, SEYMOUR AND PEASE LLP
52 E. GAY STREET
P. O. BOX 1008
COLUMBUS, OH 43216-1008

Entered Wednesday, January 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Akron City Schools Board of Education ("BOE") appeals to this board from a decision of the Summit County Board of Revision determining the value of parcel number 67-62312 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the parties' written arguments.

The subject property is improved with a Wendy's fast food restaurant. The fiscal officer initially valued the property at $1,435,000 for tax year 2016. Property owner Wendy's Properties, LLC ("Wendy's) filed a complaint seeking a decrease in value to $630,000, asserting that the fiscal officer's "value is greater than

market value using generally accepted appraisal techniques." S.T., Ex. A. The BOE filed a countercomplaint seeking to maintain the fiscal officer's initial value.

At the BOR hearing, Wendy's presented the testimony and appraisal report of Roger A. Sours, MAI, who opined the value of the subject property to be $635,000 as of January 1, 2016 using the sales comparison and income capitalization approaches to value. The BOE advocated for valuing the property in accordance with a reported sale in December 2014 for $1,435,000 – the basis of the fiscal officer's valuation following a prior BOR decision for tax year 2014. Counsel for Wendy's indicated that it had not been involved in the tax year 2014 BOR proceedings because it failed to receive notice of the complaint; however, counsel explained that the subject property was one of eighteen sold in a single portfolio sale where the former franchise operator sold back all real estate and equipment to the Wendy's corporate entity. Counsel also explained that, following the December 2014 sale, the property transferred from Wendy's International, LLC to Wendy's Properties, LLC as part of a reorganization. Though it does not appear such document was sought to be admitted into the record, Wendy's allowed members of the BOR and counsel for the BOE to review the confidential asset purchase agreement detailing the December 2014 overall transaction. In response, the BOE argued that Wendy's had failed to rebut the presumption that the December 2014 reported sale price was the best evidence of value, or that some other allocation of the overall eighteen-property sale price is more appropriate for the subject real property. Counsel for the BOE also cross-examined Mr. Sours about the lease on the property; Mr. Sours indicated it was leased on tax lien date for $33 per square foot. The BOE noted that no lease had been presented for the BOR to review, nor had any representative of the ownership appeared at the hearing to testify as to the circumstances of the December 2014 sale.

Without any explanation of the reasoning behind its decision, the BOR ultimately adopted Mr. Sours' opinion of value, and decreased the value of the property to $635,000.

The BOE appealed to this board, requesting that the value of the property be increased to $1,435,000. At this board's hearing, the BOE again presented the limited warranty deed and conveyance fee statement demonstrating the December 2014 sale to Wendy's. H.R., Exs. A, B. The deed indicates a transfer of the property from Akwen Properties, Ltd. to Wendy's International, LLC, was signed by the seller's representative on December 11, 2014, and was recorded on December 31, 2014. H.R., Ex. A. The December 30, 2014 conveyance fee statement indicates the subject real property sold for $1,435,000. H.R., Ex. B. The BOE also presented the BOR's decision for the property for tax year 2014 (the first year of the triennial period in Summit County), where the value was increased to the sale price of $1,435,000. H.R., Ex. C. Finally, the BOE presented a copy of a lease obtained from Wendy's through discovery, which indicates that a lease was entered into between Wendy's and Wenco Akron on December 11, 2014. H.R., Ex. D. Wendy's objected to the lease because it was not properly authenticated; the document was received into the record over the objection.

At the outset, we address the parties' disagreement about which party bears the burden of proof on appeal. Wendy's argues that, pursuant to the *Bedford* rule, when a BOR bases its decision on appraisal evidence, a board of education on appeal to this board bears the burden to prove a different value. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶6. We agree. Contrary to Wendy's assertion, however, the BOE in this matter *did* present evidence in support of its argument that the BOR's value undervalues the property, i.e., sale evidence, a prior BOR decision, and the lease agreement obtained in discovery. This board is therefore not bound by the BOR's valuation decision due to any failure by the BOE to attempt to meet its burden.

Moreover, Wendy's fails to acknowledge that a different rule applies where the subject property sold temporally recent to tax lien date. The BOR's decision to reject the sale and, instead, value the property in accordance with the Sours appraisal, does not prevent this board from finding that the sale is the best evidence of the property's value. In its decision explaining the elements of the *Bedford* rule, the Supreme Court clearly stated: "When the central issue is whether a sale price of the subject property establishes its

value, the factors attending that issue must usually be determined de novo by the BTA, and the *Bedford* rule does not apply." *Dublin City Schools*, supra, at ¶11. We therefore reject Wendy's argument that this board may not consider whether the reported December 2014 sale price reflects the subject property's true value as of tax lien date.

While not explicitly argued by the parties, we assume the BOE seeks to invoke collateral estoppel with regard to the sale, given the BOR's decision to increase the value of the property to the sale price for 2014. H.R., Ex. C. However, there is no evidence in the record as to who the parties were in the prior matter, nor whether the issue was actually litigated. See *Whitehead v. Gen. Tel. Co.*, 20 Ohio St.2d 108 (1969). We therefore find collateral estoppel does not apply to the issue of whether the sale is the best evidence of the property's value, and proceed to independently determine the issue based on the record of the matter before us.

Wendy's argues that the "subject property is encumbered by a lease, but the effects of the long term lease cannot be taken into account." Wendy's Brief at 6. Under R.C. 5713.03, the county fiscal officer must determine the "true value of the fee simple estate, as if unencumbered" of real property, and if the property "has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after tax lien date, the [fiscal officer] *may* consider the sale price *** to be the true value for taxation purposes." In *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, the Supreme Court explained the effect of the statutory language on the presumption that an arm's-length sale of a property is the best evidence of its value for real property taxation purposes:

> "Terraza's argument implicates two distinct, yet related, judicially created rebuttable presumptions. The first is the presumption that a submitted sale price 'has met all the requirements that characterize true value.' *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 *** (1997). In *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, ***, ¶ 16, we applied *Cincinnati School Dist.* in the context of encumbrances, stating that 'the burden lies upon the party who opposes the use of the sale price to show that the encumbrances on the property constitute a reason to disregard the sale price as an indicator of value.' This supports our conclusion that the proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate. Once the BOE provided basic documentation of the sale, Terraza had the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value. *See Cincinnati School Dist.* at 327-328.
>
> "The second presumption is rooted in the best-evidence rule of property valuation, which, as explained earlier in this opinion, provides that '[t]he best evidence of the "true value in money" of real property is an actual, recent sale of the property in an arm's-length transaction.' *Conalco*, 50 Ohio St.2d 129, ***, at paragraph one of the syllabus, quoting R.C. 5713.01; *Park Invest. Co.*, 175 Ohio St. at 412, ***. We have said that this rule – which existed before R.C. 5713.03 was amended to refer to recent arm's-length sales, *see* 136 Ohio Laws, Part II, at 3247 – creates a rebuttable presumption that the sale price reflected true value. *See Ratner I*, 23 Ohio St. at 61, ***. Nothing suggests that the General Assembly intended to depart from this longstanding rule. Indeed, R.C. 5713.03 continues to refer to recent arm's-length sales by permitting the use of sale prices in determining value. This signals that the General Assembly still favors the use of recent arm's-length sale prices in determining value for taxation purposes." (Parallel citations omitted.) Id. at ¶32-33.

Against this backdrop, we analyze the facts of the matter before us. The parties do not dispute that title to the subject property transferred in December 2014 from Akwen Properties Ltd. to Wendy's International, LLC for a reported sale price of $1,435,000, and, indeed, the BOE has presented the conveyance fee

statement and deed as evidence of such transfer. H.R., Exs. A-B. Under *Terraza*, the BOE has presented basic documentation of the sale; therefore, Wendy's has the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value.

Wendy's argues that the sale does not reflect the property's true value because the sale price included the value of a lease of the property. Notably, Wendy's provided no evidence that the property sold subject to a lease, apart from Mr. Sours' testimony. Indeed, it objected to introduction of a lease, obtained from Wendy's by the BOE in discovery, at this board's hearing because it was not authenticated. H.R. at 10. Wendy's relies solely on the Mr. Sours' testimony that the property was subject to a lease in December 2014 through at least tax lien date.

The Supreme Court has stated that it is appropriate for this board to refuse to rely on the statement of an expert appraiser about aspects of a sale for which the appraiser lacks direct personal knowledge. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-2046, ¶36. Here, it appears Wendy's believes it is the BOE's burden, not Wendy's, to prove that the property sold unencumbered. The court in *Terraza* specifically rejected such argument: "the proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza*, supra, at ¶32. Wendy's has failed to meet its burden. Although Wendy's objects to our consideration of the lease presented by the BOE, H.R. at 10, such document indicates that any lease of the property occurred outside the sale transaction. The lease is between Wendy's International, LLC (as landlord) and Wenco Akron LLC (as tenant) and was signed on December 11, 2014. H.R., Ex. D. Such document indicates that any lease of the property would have occurred *after* the December transfer of the property from Akwen Properties Ltd. Moreover, while "mere speculation is not evidence," *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, ¶15, one would expect that when a property sells subject to a lease, an assignment of such lease will occur. The record before us indicates no such assignment, nor any other affirmative evidence that the property sold subject to a lease.

To the extent Wendy's argues that the December 2014 sale should be disregarded because it was part of a larger portfolio sale or included items other than real property, again, the only evidence to support such assertion is the statement of Mr. Sours in his appraisal report, Appraisal at 2, and the statements of Wendy's counsel during the BOR hearing. "[S]tatements of counsel are not evidence." *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). While counsel allowed the BOR members to view the confidential asset purchase agreement purportedly related to the December 2014 sale, such agreement was not submitted as evidence and is not in the record before us. We are therefore unable to confirm Mr. Sours' and counsel's assertions. See *Hilliard City Schools*, supra.

Notwithstanding the lack of evidence, simply being part of a larger portfolio sale does not defeat the utility of a sale for valuing a property. With a "bulk" sale, "the best evidence of true value 'is the proper allocation of the lump-sum purchase price' to individual parcels." *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶18, quoting *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, ¶17, quoting *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph two of the syllabus. Where an owner disputes the allocation of a bulk sale price to a particular property, the burden is on the owner to demonstrate why the allocation does not reflect the parcel's true value. *FirstCal*, supra, at ¶25 ("FirstCal, as purchaser of the property, performed the allocation to Franklin County in the first instance, and FirstCal possesses the information necessary to demonstrate its proper relationship to the value of the Franklin County parcels."). We therefore must determine whether the appraisal evidence submitted by Wendy's meets its burden to establish that the allocation of $1,435,000 to the subject property on the conveyance fee statement recorded in December 2014 does not reflect the property's true value, or that the sale otherwise does not reflect true value.

Upon review of Mr. Sours' appraisal, we find that it does not rebut the allocation of the sale price to the

subject property, nor does it rebut any other aspect of the sale. Most notably, Mr. Sours does not appear to have analyzed any aspect of the sale; he simply disregarded its utility based on his understanding that it was part of a larger portfolio sale. Appraisal at 2. Instead, he opined value based on the sales comparison and income capitalization approaches to value.

Mr. Sours relied on four comparable sales in his sales comparison approach, which sold for unadjusted prices of $178.57/SF to $279.02/SF between October 2012 and November 2015. He made gross adjustments of 35% to 80% to arrive at an estimated value for the subject of $200/SF. The most sizable adjustments, up to 40%, were for condition and age, as the subject property was built in 2004 as compared to the comparables, which were built in 1988, 1998, 1953, and 2000. He also made adjustments to all four sales for the configuration of the comparables as compared to the subject; it is unclear what the basis of such adjustment was, as all the comparables were fast food restaurants, and he testified that the subject property is a "typical" Wendy's restaurant. Given the sizable adjustments made, we question whether the comparable sales he selected are the best reflection of the subject property's value on tax lien date and do not find his sales comparison approach probative.

Moreover, Mr. Sours made no adjustments for market conditions at the time of the comparable sales to relate them to tax lien date. In his narrative explanation of the adjustments made to the comparables, he stated, for each sale comparable: "The market conditions at the time of transfer are considered similar to the market conditions as of the effective date herein." Appraisal at 27-30. The comparable properties sold between October 2012 and November 2015. It therefore appears that, in Mr. Sours' opinion, the market in which the subject property sold in December 2014 was no different than the market on tax lien date.

In his income approach, Mr. Sours estimates a market rent for the subject property to be $18.50/SF based on five lease comparables, including the current lease for a former Wendy's restaurant in Fairlawn and two current listings for former Wendy's restaurants in Canton. Notably, all three former Wendy's lease comparables are for properties significantly older than the subject, having been built in 1969 (lease comparable #1), 1986 (lease comparable #4), and 1983 (lease comparable #5). Mr. Sours asserts in the appraisal report that the subject property's actual rental rate is "well above market rate," and testified during the BOR hearing that the rate was $33/SF, increasing to $53/SF over time, for a 30-year term. While he provides no documents to substantiate such lease rate, even if we assume his recitation of the rate is accurate, we question whether he accurately captured the subject's market, having relied on significantly older properties as his lease comparables, and, as a result, ultimately question his opinion that the subject's rental rate is above market.

He continues his income capitalization approach by then estimating a vacancy and collection loss factor of 8%, a management fee of 5% of effective gross income, and a reserve for replacement of $0.20/sf. Mr. Sours capitalized the resulting net operating income of $50,670 at 8%, to arrive at a value conclusion of $635,000.

He ultimately reconciled his identical value conclusions under the sales and income approaches to a final value opinion of $635,000 as of January 1, 2016.

Wendy's argues in its brief that "the 'true value' of real property, such as the subject, must be grounded in economic reality." Brief of Appellee at 7. We agree. However, we find the reported sale in December 2014 is the evidence most indicative of the subject property's economic reality. The record before us contains no reliable evidence that the subject sold either subject to a lease, or as part of a larger portfolio sale, and it was Wendy's burden to provide such evidence. Moreover, nothing in Mr. Sours' appraisal report leads us to conclude that the December 2014 sale reflected anything other than economic reality. While he opined a value below the sale price, Mr. Sours relied on dissimilar properties, in both his sales and income approaches, and provided no evidence that market conditions changed between the date of the sale and tax lien date. Upon consideration of the totality of the record before us, we conclude that the best evidence of the subject property's true value for tax year 2016 is the December 2014 reported sale price.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$1,435,000

TAXABLE VALUE

$502,250

OHIO BOARD OF TAX APPEALS

LOUISVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1028
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - LOUISVILLE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

JB METZGER LTD.
P.O. BOX 229
LOUISVILLE, KY 44641

Entered Wednesday, January 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 3604676, for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The subject property was initially assessed at $1,083,400. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $1,438,700, asserting that "[p]roperty value was adjusted down from reappraisal value for 2015 without explanation." The property owner did not file a countercomplaint.

At the BOR hearing on the matter, the BOE and property owner appeared to submit argument and evidence into the record. In its presentation, counsel for the BOE noted that the subject property's value had changed from the tax year 2015 triennial update value of $1,438,700. He asserted that a county staff appraiser's recommendation noted that the subject property's value had been reduced based upon a courtesy appraisal

performed by Dan Miller, which valued the subject property, and two other parcels, at $1,125,000 as of the tax lien date; however, such appraisal report was not provided. Counsel argued that the mid-triennial decrease in the subject property's value was unwarranted given its valuation history. Steven A. Metzger, one of the owners of the property owner, and David Jackson appeared on behalf of the property owner. Metzger testified that the subject property experienced flooding because of its location in a floodplain and that he agreed with Miller's conclusion of the subject property's value. The BOE cross-examined Metzger about the subject property and requested a copy of Miller's appraisal report. The BOR voted to retain the subject property's initially assessed value of $1,083,400 and subsequently issued a written decision to that effect. Thereafter, the BOE appealed to this board. The parties waived the opportunity to submit additional evidence at a hearing before this board. We will, therefore, reach a decision based upon the record developed at the BOR.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

In this case, the BOE challenges the auditor's assessment of the subject property for tax year 2016, asserting that the auditor improperly cut off the carry-forward during the interim period, of which 2015 was the first year. We reject the BOE's argument that that auditor's revaluation of the subject property for tax year 2016 was improper and should result in the reinstatement of its 2015 value, $1,438,700. In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, the court described the auditor's duties to value and assess taxes against real property in the county pursuant to R.C. 5713.01(B) and R.C. 5713.03. Pursuant to these duties the auditor must reappraise property values once every six years and perform an update at the three-year interim point. Id. at ¶19; R.C. 5713.01, 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). The court acknowledged that R.C. 5713.01(B) directs an auditor to "'revalue and assess at any time all or any part of the real estate in such county *** where the auditor finds that the true or taxable values thereof have changed.'" Id. at ¶19. The court explained that "[t]his duty might be triggered by an arm's-length sale" or "the reporting of an improvement or casualty to the property," for example. Id. The court clarified that "[t]ypically, the auditor does carry over the value from the first year of a triennium to the next year, *unless some event that triggers a need to change the valuation*." (Emphasis added.) Id. at ¶32.

In this matter, the record indicates that the auditor engaged Miller to appraise the subject property as of the tax lien date. Apparent from the record, Miller's appraisal report triggered "a need to change the valuation" of the subject property given that such report noticed the auditor that the subject property had been overvalued. Because the auditor's revaluation of the subject property fell within the auditor's ordinary duties of office, the presumption of regularity applies and the auditor is presumed to have done it properly. See *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶28. A party may rebut this presumption, but we find that the BOE has failed to show that the auditor's actions were improper and failed to present competent and probative independent evidence of a different value.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the BOE failed to satisfy its evidentiary burden to provide competent and probative evidence of the subject property's value. It is, therefore, the order of the board that the subject property's value are as follows as of January 1, 2016:

TRUE VALUE

$1,083,400

TAXABLE VALUE

$379,190

OHIO BOARD OF TAX APPEALS

SUESAN HERSHEY, (et. al.), Appellant(s), vs. DARKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-714 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUESAN HERSHEY
3422 SR 571 WEST
GREENVILLE, OH 45331

For the Appellee(s) - DARKE COUNTY BOARD OF REVISION
Represented by:
R. KELLY ORMSBY, III
PROSECUTING ATTORNEY
DARKE COUNTY
504 SOUTH BROADWAY
GREENVILLE, OH 45331

Entered Monday, January 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which valued the subject property, parcel F24-0-212-20-00-00-20300, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $258,600. The property owner filed a complaint with the BOR, which requested the subject property be revalued at $215,000 based upon the value opined to by an appraisal report. At the BOR hearing on the matter, the property owner appeared, with her attorney, to submit argument and evidence in support of the complaint. In doing so, the property owner testified that the house situated on the subject property had been destroyed because of a fire and that it had been rebuilt in a shoddy manner. As a result, she stated, there were a number of problems that resulted from the poor reconstruction of the house. She also testified to the poor condition of the barn situated on the subject property. Her counsel argued that all of the problems with the house and poor condition of the barn necessitated a reduction to the subject property's value. One of the BOR members noted that although the house had been reconstructed in 2014, the auditor considered it to be in "fair" condition to account for the condition issues. The BOR voted to retain the subject property's initially assessed value and subsequently issued a written decision to that effect. This appeal ensued.

None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. However, the property owner attempted to supplement the record with previously-provided documents, such as the appraisal report, and with newly-provided documents, such as additional

photographs, floodplain map, and newspaper articles about hog farming. We will only consider those documents that were provided at the BOR hearing. See *Neon Rave, LLC v. Franklin Cty. Bd. of Revision* (Apr. 19, 2016), BTA No. 2015-1298, unreported at 2 ("As noted, the appellant did not request a hearing before this board. However, it attached written argument and a number of documents to its notice of appeal. Because the documents were produced outside the hearing context and were clearly offered for their evidentiary value, we cannot consider them."). Accord *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

In this matter, the property owner primarily relied upon an appraisal report, performed by Ryan D. Carlson, which opined the value of the subject property to be $215,000 as of October 17, 2017. For two main reasons, we do not find this appraisal report to be competent and probative evidence of the subject property's value. First, the appraiser did not appear at the BOR hearing, to authenticate the appraisal report, to testify regarding his professional credentials and the methodologies utilized in deriving the valuation conclusions, or to be questioned by members of the BOR. For example, a review of the BOR hearing record indicates that one the BOR members was skeptical of the appraiser's analysis, specifically his $3,000 per acre adjustment to account for differences in site size. If this board had had the opportunity to question the appraiser, we would have asked how the appraiser concluded that the subject property and comparable sales had the same "average" condition rating given the problems enumerated by the property owner. "An expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion." *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). See, also, unreported. *Evenson v. Erie Cty. Bd. of Revision*(Apr. 12, 2002), BTA No. 2001-V-770,

Second, the appraisal opined the subject property's value as of October 17, 2017, not as of the tax lien date, January 1, 2017. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of" the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555, (1996) ("We emphasize that the BTA '*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."). (Parallel citations omitted.) We acknowledge that the court has held that even an appraisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data contained in such report. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25. In this case, however, given the deficiencies with the appraisal report as noted above, we find that the appraisal does not contain the same level of reliability as in *Copley-Fairlawn*. As the court recently pointed out, "[t]he validity of every comparable turns on whether, and to what extent, the sale is in fact comparable, and an appraiser must make adjustments to account for differences ***." *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 412, 2016-Ohio-1506,
¶32.

To the extent that the property owner asserted that the problems with the house, as the result of poor workmanship and/or poor construction quality, necessitated some reduction to the subject property's value, we note that the record indicates that the auditor considered those problems in the subject property's

valuation. As indicated at the BOR hearing and confirmed by the property record card, despite the new construction of the house, the auditor considered it to be in "fair" condition and valued the house accordingly.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we are constrained to conclude that the property owner failed to provide competent and probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

TRUE VALUE

$258,600

TAXABLE VALUE

$90,510

OHIO BOARD OF TAX APPEALS

GRANDVIEW HEIGHTS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-652, 2018-654, 2018-655, 2018-656, 2018-657, 2018-658

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GRANDVIEW HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MITCHELL L. STITH
SCOTT SCRIVEN LLP
250 EAST BROAD STREET
SUITE 900
COLUMBUS, OH 43215

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

KOESTNER, HEIDI, KOESTNER-ORIOLD ROSEMARIE
Represented by:
DOW T. VOELKER
VOELKER & VOELKER
1620 W. FIRST AVENUE
COLUMBUS, OH 43212

Entered Monday, January 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are now considered upon the appellant board of education's ("BOE") motions to show cause, which we will construe as motions to remand this matter to the board of revision ("BOR") with instructions to dismiss the underlying complaints for lack of jurisdiction. As these cases appear to involve related property owners and virtually identical motions, the cases have been consolidated for decision purposes. Ohio Adm. Code 5717-1-09. We consider the matters upon the motions, the parties' respective responses, and the statutory transcripts certified to this board pursuant to R.C. 5717.01.

The statutory transcripts reveal that on March 26, 2018, complaints against the valuation of real property for tax year 2017 were filed with the BOR for the following parcels: 030-002201, 030-001063,

030-002193, 030-000727, 030-001062, and 030-001064. The complaints listed either "Heidi Koestner & Rosemarie Koestner-Oriold" or "Adelaide Koestner TR" as the property owners; the complainant if not owner as "Jessica Trembly;" and were signed by Ms. Trembly who identified her "title (if agent)" as "Property Manager." At the BOR hearing, Ms. Trembly testified that she filed the complaints on behalf of the owners. The BOE moved to dismiss the complaints for lack of jurisdiction, noting that they were filed by an individual not authorized to file a complaint, i.e., a property manager on behalf of the owner. The property owners' counsel objected to the BOE's motion, noting Ms. Trembly's testimony that she owned property in Franklin County. The BOR ultimately issued decisions finding value for the subject property, and the BOE appealed to this board. In its motions, the BOE again argues that the complaints were not filed by an authorized individual and therefore failed to properly invoke the jurisdiction of the BOR. The owners argue that Ms. Trembly had standing to file as an owner of taxable real property in the county.

As the Supreme Court explained in *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, "[i]t is now well settled that the language of R.C. 5715.19(A) establishes the jurisdictional gateway to obtaining review by the boards of revision." Id. at ¶10. R.C. 5715.19(A) provides that an owner of taxable real property in the county may file a complaint against the valuation of any taxable real property in the county. In addition, certain individuals, in addition to the property owner itself, are entitled to file valuation complaints. "If someone other than the property owner prepares and files the complaint on behalf of the owner, that person must be an attorney or authorized by law to make such filing." *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244, ¶11. Property managers are not among those non-attorneys specifically identified by the statute as able to file on behalf of an owner. Id. at ¶17.

Although the owners argue that Ms. Trembly owns taxable real property in Franklin County, there is no indication from the face of the complaints nor in her testimony that she filed the complaints on her own behalf as a property owner. Rather, she filed as the agent of the owners, who she indicated were elderly or living outside the country, pursuant to a management agreement. R.C. 5715.19(A) clearly distinguishes between those who may file on their own behalf, i.e., "[a]ny person owning taxable real property in the county or in a taxing district with territory in the county," and those who may file on another's behalf, e.g., an owner's spouse, a public accountant, a real estate appraiser, or a real estate broker. We therefore find that Ms. Trembly's ownership of other property in the county does not overcome the jurisdictional defect raised by the BOE. See *Bd. of Edn. of the Groveport Madison Local Schools v. Franklin Cty. Bd. of Revision* (June 26, 2012), BTA No. 2009-Q-2931, unreported. Ms. Trembly clearly prepared and filed the complaints on behalf of the owners as their agent.

"[A] complaint prepared and filed by an agent who is not a lawyer fails to invoke the board of revision's jurisdiction." *Greenway Ohio*, supra, at ¶12, citing *Sharon Village, Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479, 483 (1997). The involvement of an attorney after the filing of the complaint does not overcome the jurisdictional hurdle presented. Compare *Toledo Public Schools*, supra (complaints filed by property management company through an attorney were jurisdictionally sufficient). Ms. Trembly made clear in her testimony to the BOR that no attorney was involved in the preparation and filing of the complaints. The appearance of an attorney at the hearing does not cure the jurisdictional defect. *Kettering City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (May 1, 2017), BTA No. 2016-2510, unreported.

Based upon the foregoing, we find the BOE's motions well taken. We therefore remand these matters to the Franklin County Board of Revision with instructions to vacate its decisions and dismiss the underlying complaints for lack of jurisdiction, the practical effect being reinstatement of the auditor's initial values.

OHIO BOARD OF TAX APPEALS

KENOWA MHP, LLC, (et. al.),

Appellant(s),

vs.

ROSS COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1033

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KENOWA MHP, LLC
Represented by:
PAUL M. JONES, JR.
PAUL JONES LAW, LLC
435 EAST MAIN STREET
SUITE 220
GREENWOOD, IN 46143

For the Appellee(s) - ROSS COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

UNION SCIOTO LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Monday, January 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals decisions of the board of revision ("BOR"), which determined the value of the subject property, parcels 26-1603434.000 and 26-1603440.000, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and the pending motion in limine and associated response.

The subject property was initially assessed a combined true value of $426,880. The board of education ("BOE") filed a complaint with the BOR, which requested that the subject property be revalued at $950,000 based upon the price at which it transferred in July 2016. The property owner filed a countercomplaint, which objected to the request, asserting that the subject property's $426,880 value should be retained because the July 2016 sale included items other than realty. The BOR held a hearing on the matter, at which time only the BOE appeared to submit argument and/or evidence into the record. In doing so, the BOE submitted two conveyance fee statements that demonstrated the separate transfer of the subject

parcels for $667,500 each, i.e., for a combined $1,335,000, in April 2016. The BOE also submitted a conveyance fee statement that demonstrated the $950,000 transfer of the subject property, along with $650,000 of personal property (inclusive of goodwill, intangibles, and personal property), in July 2016. Because the sale of April 2016 was closest to the tax lien date, the BOE amended its opinion of value to $1,335,000 to reflect the total price at which the subject property transferred. The BOR voted to grant the BOE's request and subsequently issued decisions that valued the subject property at $1,335,050. This appeal ensued.

While this matter was pending, the BOE filed a motion in limine that sought to preclude the property owner from submitting evidence pursuant to R.C. 5715.19(G).

At this board's hearing, the property owner, BOE, and county appellees appeared to supplement the record with additional argument and evidence. The property owner argued that the sale in April 2016 failed to allocate portions of the $1,335,000 sale price to personal property. Instead of simply relying upon the April 2016 sale price to determine the subject property's value, the property owner argued that this board should deduct $650,000 for personal property, as allocated by the parties in the subsequent sale in July 2016, or this board should simply rely upon the sale in July 2016. The property owner submitted a packet of documents in support of its argument. Both the BOE and county objected to the newly submitted documents, arguing that the property owner should have appeared at the BOR hearing to submit the documents into evidence pursuant to R.C. 5715.19(G). The BOE also argued that the property owner failed to submit competent and probative evidence that the sale in April 2016 included personal property and that demonstrated the propriety of the personal property deduction for the sale in July 2016. The county appellees also argued that the property owner failed to submit competent and probative evidence that the sale in April 2016 included personal property and argued that the property owner should have presented a witness with firsthand knowledge of the April 2016 sale.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the BOE and county appellees objected to the property owner's evidence pursuant to R.C. 5715.19(G), which requires that evidence known to, or in the possession of, a party should first be provided at the board of revision level unless good cause has been shown. Here, the property owner noted it did not attend the BOR hearing because it did not object to valuing the subject property consistent with the sale of July 2016, as requested on the BOE's complaint. The information it presented on appeal is to respond to the request, made first at the BOR hearing, that the property be valued in accordance with the earlier sale, in April 2016. We find that the property owner has demonstrated good cause and overrule the appellees' objection.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). "Pursuant to R.C. 5713.01, the 'true value in money' is the basis for assessing real property and usually equates to 'market value,' meaning what the property would sell for when the buyer and seller arrive at the sale price acting as 'typically motivated market participants.' *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ***, ¶ 14." (Parallel citation omitted.) *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578, at ¶19. Once the existence of a sale is established, the affirmative burden rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. When a party successfully challenges the reliability of the sale, the burden shifts back to the proponent of the sale to show that it should nevertheless be regarded as the best evidence of the property's value. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Additionally, because the central issue in this appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, at ¶11.

In this matter, the record indicates that the subject property was the subject of two sales that may be

considered temporally "recent" to the tax lien date: (1) the $1,335,000 combined transfer of the subject property from Kenowa at Chillicothe, LLC to Greenlawn Companies, Inc. ("Greenlawn") in April 2016 and (2) the $950,000 allocated transfer of the subject property from Greenlawn to the property owner in July 2016. In *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, the court stated in paragraph one of its syllabus that "[w]hen a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes." We proceed, therefore, to first consider the sale closest to the tax lien date, i.e., the $1,335,000 combined transfer of April 2016.

The presentation of the conveyance fee statements that memorialized the April 2016 sale, confirmed by notations on the property record card, created a rebuttable presumption that such sale was a recent, arm's-length transfer indicative of the subject property's value. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. Therefore, the burden is on the property owner to demonstrate why the April 2016 sale should be rejected. In an effort to satisfy this burden, the property owner primarily argued that that this sale was not indicative of the subject property's value because such sale included personal property, which the parties failed to allocate. Based upon our review of the record and relevant case law, we reject the property owner's argument.

As the opponent of using the full reported sale price to value the property, the property owner bears the burden to prove the propriety of an allocation to real estate. *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, ¶36. See also *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664. In addressing the property owner's burden, the court explained, in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650:

> "The burden is not a heavy one; the owner must typically be able to point to ' "corroborating indicia" ' in the record that supports the allocation. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 1, 2014-Ohio -853, ***, ¶ 42, 46-47, quoting *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 18. The burden may be satisfied if the 'best available evidence' supports the proposed reduction from the full sale price. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, ***, ¶ 18, 27. In evaluating the sufficiency of the proof, the allocation agreed to by the parties to the asset purchase agreement is 'relevant' in allocating for tax purposes, but it 'is not sufficient by itself, because the motivations behind the allocation are crucial to a determination of its propriety for tax-valuation purposes.' *RNG Properties* at ¶ 37. In other words, the mere fact that the parties to a bulk sale of assets have agreed to allocate a particular amount to real estate does not by itself establish the propriety of the allocation." (Parallel citations omitted.) Id. at ¶10.

In this matter, the property owner failed to provide any competent, credible, and probative evidence, which demonstrated that the parties to the April 2016 sale allocated any portion of the $1,335,000 sale price to personal property. No documents demonstrating an allocation between personal property and real property were provided. No one with firsthand knowledge of such sale testified before the BOR or before this board. Although the property owner submitted the affidavit of Ronald Younkin, an owner of Greenlawn, the buyer in the April 2016 sale, as a substitute for in person testimony, we give no weight to it. It should be noted that Younkin identified the personal property that allegedly transferred, in both sales, as "mobile home pads, streets, utilities, and other improvements." We do not consider the mobile home pads and streets to be personal property as they are not separable from the real property. See Statutory Transcript at Property Record Card. Additionally, no information was provided about the utilities and "other improvements" such that this board could determine that these items were properly classified as personal property. It should also

be noted that Younkin's averred statement regarding the value of the personal property in the July 2016 sale, $600,000, differs from the value provided on the conveyance fee and settlement statements for such sale, $650,000. Because he did not appear at this board's hearing and, therefore, was not subject to examination, we are left to speculate about this inconsistency. Although the property owner claimed that Greenlawn would not cooperate with its efforts to obtain information about the April 2016 sale, there is no indication that the property owner issued a subpoena to Greenlawn for relevant documents or testimony. See *Dauch v. Erie County Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412, at ¶21 ("[T]he county could have obtained relevant documents through discovery and ensured Dauch's attendance at the hearings by issuing subpoenas. See R.C. 5703.03; Ohio Adm. Code 5717-1-14.").

Furthermore, this board has previously admonished parties for attempting to submit evidence through affidavit. See *Emerick Manor Gomes, LLC v. Warrensville Heights Bd. of Edn.* (May 1, 2012), BTA Nos. 2009-K-769, et al., unreported. As we stated in *Raskin v. Limbach* (Feb. 2, 1988), BTA No. 1986-F-28, unreported:

> "We generally regard affidavits of the type herein submitted, as simply voluntary, ex parte declarations, primarily self-serving in nature, and while submitted under oath, made without notice to the adverse party, and, since the affiant never appears, there is no opportunity for cross-examination. Naturally, these characteristics substantially reduce the weight accorded thereto, rendering such material of little probative value." Id. at 11, fn.1.

Even if we were to accept the premise that the same amount of personal property allocated in the second sale, in July 2016, was included in the first sale, in April 2016, we would not have deducted any portion of the $1,335,000 purchase price for personal property. As noted above, the settlement statement for the sale in July 2016 indicates that the parties allocated $650,000 to personal property identified as goodwill, intangibles and personal property. The property owner failed to demonstrate that that the goodwill is "a separable asset that is distinct from the realty." *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, ¶33. See, also *Cincinnati School Dist. Bd. of Edn.*, supra; *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, at ¶25 (finding that this board correctly found that there was "no evidence in the record to support the existence of a business value that could actually be severed from the real estate and be transferred or retained separately.") Compare *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. The property owner also failed to identify the intangibles and personal property included in this sale, which precludes this board from determining whether these items were properly classified as personal property.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to satisfy its evidentiary burden on appeal. The property owner failed to submit competent, credible, and probative evidence to rebut the presumptions accorded to the sale closest to the tax lien date, in April 2016. Although the property owner argued that items other than realty were included in such sale, we are unable to discern the items that actually transferred in such sale and whether those items were properly classified as personal property. Given that the BOR valued the subject property consistent with such sale, we also affirm its decision to allocate the sale price between the subject parcels consistent with *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2016:

PARCEL NUMBER 26-1603434.000

TRUE VALUE: $80,850

TAXABLE VALUE: $28,300

PARCEL NUMBER 26-1603440.000

TRUE VALUE: $1,254,200

TAXABLE VALUE: $438,970

OHIO BOARD OF TAX APPEALS

CHIT CHAT COMMUNITY HOMES, INC., (et. al.),	CASE NO(S). 2017-1736
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
ALLEN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CHIT CHAT COMMUNITY HOMES, INC.
Represented by:
LES HENDERSON, SR.
YES WE CAN COMMUNITY HOMES, INC.
311 E. MARKET STREET
SUITE 104
LIMA, OH 45801

For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, January 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which valued the subject property, parcel 46-0109-01-006.00, for tax year 2016. We proceed to consider this matter based upon the notices of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The auditor initially valued the subject property at $29,600. The property owner filed a complaint with the BOR, which requested that the subject property be revalued partly based upon a recently installed drainage ditch located within two feet of the home situated at the subject property, as well as the unchanged condition of the interior of the home. At the BOR hearing on the matter, Angela Evans, chief executive director of the property owner, and Les Henderson, a volunteer spokesperson for the property owner, appeared in support of the complaint. Mr. Henderson testified that the subject property was used for storage and as a meeting place. He argued that there had been no material changes to the subject property since the BOR had reduced its value for tax year 2011, in response to which one of the BOR members noted that the sexennial reappraisal occurred in 2015, which resulted in the subject property being revalued at $29,600. Mr. Henderson did, however, note that the city had installed a drainage ditch within a few short feet of the home situated on the subject property and that the home was heated by kerosene heaters because it lacked a furnace. The BOR members explained the real property valuation process to Mr. Henderson. Apparent from the record, Mr. Henderson supplemented the record, after the hearing ended, with photographs of the interior and exterior of the home sitused on the subject property to demonstrate the home's condition. Based upon the evidence presented, Steve Birch, an appraiser for Lexur Appraisal Services, recommended that the county auditor's records be changed to reflect the "fair" condition of the home, instead of "good" condition, removal of central heating, and application of functional depreciation for the drainage ditch and other items. In doing so, Birch recommended that the subject property be revalued at $18,600, which the BOR accepted. It subsequently issued a written decision consistent with the recommendation and this appeal ensued.

At this board's hearing, only the property owner appeared to supplement the record with additional evidence. Mr. Henderson appeared, along with Ms. Leslie Henderson, to offer additional testimony about the condition of the subject property, which they argued necessitated further reduction to the subject property's value. In support of the argument, Mr. Henderson submitted photographs of three neighboring properties, which he asserted that the county auditor had previously described as comparable to the subject property. (It appears that these are clearer versions of the photographs submitted to the BOR.) He noted that those other properties were not, in fact, comparable to the subject property because they did not have a drainage ditch in such close proximity to the homes. He amended the property owner's opinion of the subject property value, from

$10,370 to $13,700, based upon subject property's purported assessed value at the time the property owner purchased it in 2007.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Although we issued two show-cause orders, which directed the BOR to satisfy its statutory duty to provide a full and complete record of its proceedings, the statutory transcript remains deficient. A review of the BOR hearing record indicates that Mr. Henderson provided the BOR with a copy of the BOR hearing record related to the issue of the subject property's value for tax year 2011. Because this board and litigants rely upon boards of revision to satisfy their statutory duty to create and maintain records capable of being reviewed on appeal, the BOR should take care to ensure that its records are complete. *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶27, fn.4. See also *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St. 3d 129, 2016-Ohio-1094. However, we also remind the parties of their duty to assure that the statutory transcript contains the evidence and/or filings presented to the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564 (2001).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

The property owner primarily argued that defects of the subject property, i.e., the drainage ditch in close proximity to the home and dilapidated condition of the interior of the home, require this board to reduce its value. There was no evidence about how any of the alleged defects impacted the subject property's value on tax lien date. For example, it is undisputed that there is a drainage ditch within close proximity of the home situated on the subject property. However, the property owner failed to quantify how much the drainage ditch negatively impacted the subject property's value, e.g., whether the drainage ditch caused a $500 loss in value or a $5,000 loss in value. In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev*., 75 Ohio St.3d 227, 228, *** (1996) (stating '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.) Id. at ¶7.Likewise, this board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to determine real property value.See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported.

Similarly, we further note that the property owner argued that the county auditor's initially assessed value was unexplained given the condition of the home situated on the subject property. As the court noted in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, at ¶21, an assessing official has no burden to demonstrate the propriety of an initial assessment of real property value. Specifically, the court held "we find it immaterial that the [auditor's] upward adjustment lacks a supporting rationale because, as the BTA correctly found, Jakobovitch failed to furnish competent and probative evidence of her proposed value. Under the case law, the [auditor] does not bear the burden to prove the accuracy of his or her valuation until the proponent of a different value presents competent and probative evidence to rebut that valuation." Id, citing *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, at ¶ 23, 30-31.

Likewise, the subject property's valuations for earlier tax years, whether by the county auditor or BOR, do not require this board to reduce the subject property's value. The Supreme Court has held that each tax year stands alone, and the fact that value has been modified in another year, i.e., the subject property's initially assessed value in 2007 or the BOR's decision to revalue the subject property at $13,600 for tax year 2011, is

not competent and probative evidence that a different year's value, i.e., 2016, should also be changed. We note that the county auditor conducted the sexennial reappraisal of real property in the county in 2015 and, therefore, the subject property's 2007 and 2011 values have no bearing on its value for 2016. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997). See, also *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588.

We conclude that the property owner failed to satisfy the evidentiary burden on appeal and now turn to the propriety of the BOR's decision to reduce the subject property's value from $29,600 to $18,600. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, at ¶15 (the Supreme Court held that this board "erred in failing to evaluate the probative character of the deputy auditor's report before accepting it as a basis for the BOR's reductions."). As noted above, Birch determined that the county auditor's records failed to accurately capture the condition of the home situated on the subject property. We can discern from notations, and associated calculations, on the property record card that changes were made to reflect that the home had no heat (instead of having heat), was in fair condition (instead of good condition), and suffered from functional depreciation of 60% (instead of 50%) and from some obsolescence (instead of none). Because the property record card provided the values and/or calculations to enable this board to replicate the BOR's conclusion of value, we affirm the BOR's decision. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation. ¶ 13."). *Vandalia-Butler City Schools*, 130 Ohio St.3d 291, 2011-Ohio-5078, ***,It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2016:

TRUE VALUE

$18,600

TAXABLE VALUE

$6,510

OHIO BOARD OF TAX APPEALS

CHARLES DORSEY, (et. al.),

Appellant(s), vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.), Appellee(s).

CASE NO(S). 2018-1216

(REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - CHARLES DORSEY
4608 WHITEHALL DRIVE
SOUTH EUCLID, OH 44121

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. This matter is now decided upon the motion, the notice of appeal, and appellant's response.

On August 31, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on August 1, 2018. Appellant did not include a copy of a BOR decision. The record does not show that a decision was issued in this matter.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, the reasons stated in the motion, and appellant's response, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SAIRUPA KUMAR, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-856 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SAIRUPA KUMAR
OWNER
7093 KATE DR
HUDSON, OH 44236

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
TIMOTHY J. WALSH
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

Entered Monday, January 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant property owner Sairupa Kumar appeals to this board from a decision of the Summit County Board of Revision ("BOR") determining the value of parcel number 30-05017 for tax year 2017. No party requested a hearing before this board at which to present new evidence. Ohio Adm. Code 5717-1-16(A). We therefore consider the matter upon the notice of appeal and the statutory transcript certified by the fiscal officer pursuant to R.C. 5717.01.

The subject property, improved with a single-family residence, was initially valued by the fiscal officer at $402,170 for tax year 2017. The appellant property owner filed a complaint seeking a decrease in value to $287,500. At the hearing, the owner testified that the property was purchased for that amount in 2007, and no improvements had been made since the purchase. The BOR members noted many sales in the neighborhood of seemingly similar properties for around $400,000; however, the owner indicated that the subject's condition is inferior to other properties in the neighborhood. Ultimately, the BOR found insufficient evidence to warrant a reduction, and issued a decision finding no change in value.

On appeal to this board, appellant seeks a value of $300,000, again indicating that no improvements have been made to the property.

In challenging the valuation of real property, "the appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. In our review of this matter, we are mindful of the basic principle that "[t]he

best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415.

While appellant appears to rely on a 2007 sale of the subject property, such sale occurred ten years prior to tax lien date. (We note that the fiscal officer's property record card indicates that appellant may have acquired the property in 1997, rather than 2007.) The Supreme Court, in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, held:

> "[A] sale that occurred more than 24 months before the tax lien date and that is reflected on the property record maintained by the county *** fiscal officer should not be presumed recent when a different value has been determined for that lien date as part of the six-year reappraisal." Id. at ¶26

The burden then falls to appellant to provide evidence demonstrating that no change in the market occurred between the date of sale and tax lien date. Appellant failed to do so. We are therefore unable to rely on appellant's 2007 purchase of the property in determining value as of January 1, 2017.

In the absence of any other evidence of the subject's property value, we find appellant has not met the burden of proof on appeal. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follow:

TRUE VALUE

$402,170

TAXABLE VALUE

$140,760

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-181
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

WHITE PICKET PROPERTIES, LLC
ATTN: ALEX STEWART
P. O. BOX 1082
NEW ALBANY, OH 43054

Entered Tuesday, January 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Columbus City Schools Board of Education ("BOE") appeals to this board from a decision of the Franklin County Board of Revision ("BOR") which reduced the value of parcel number 010-169349-00 for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The auditor initially valued the subject property, which is improved with a single-family residence, at $79,800. Property owner White Picket Properties LLC filed a complaint seeking a decrease in value to $50,000, to reflect the price for which it purchased the property in November 2017. The BOE filed a countercomplaint seeking to maintain the auditor's initial value. At the BOR hearing, property manager Alex Stewart testified that the owner had recently purchased the property from a lender, had made no substantial changes to the property since purchase, and was renting the property for $1,099 per month. Counsel for the BOE noted that the sale documents (quit claim deed and settlement statement) indicated the

property was purchased from the Secretary of Veterans Affairs ("VA"). The BOR found the sale to be the best indication of the property's value, and decreased the value of the property to the sale price, i.e., $50,000.

[3] On appeal to this board, the BOE argues that the reduction in accordance with a sale from the VA is improper, as such sale is considered a forced sale and does not occur between typical market participants. At this board's hearing, the BOE presented the deed and exempt conveyance fee statement to demonstrate that the property was purchased from the VA. In addition, the BOE presented a purchase addendum it received in discovery from the owner, which indicated that the property was acquired by the VA through foreclosure, that the property was purchased "as is," and that the owner was prohibited from re-selling the property for sixty days after the transfer of title. These factors, the BOE argues, were factors used by the Supreme Court in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* ("*Fenco*"), 127 Ohio St.3d 63, 2010-Ohio-4907, to find that the sale in that case (from HUD) was a forced sale and not indicative of value. In the absence of any other evidence of value, the BOE asks that this board reinstate the auditor's initial value. The owner did not participate at this board's hearing.

[3] In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. We are also mindful that, where "the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. See also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7 ("our case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

[4] While a recent, arm's-length sale is the best evidence of a property's value, a forced sale is not. R.C. 5713.04. Instead, the advocate of valuing a property in accordance with a forced sale must demonstrate that the sale occurred between typically motivated parties. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶43. In *Fenco*, supra, the Supreme Court held that a sale by HUD, as guarantor of the loan on the property who acquires the property after foreclosure of that loan, is a forced sale. This board repeatedly held that a sale from the VA is akin to a purchase from HUD and does not constitute an arm's-length sale. See, e.g., *Falknor v. Montgomery Cty. Bd. of Revision* (Nov. 20, 2012), BTA Nos. 2011-Y-931, 1359, unreported; *Charm of Cleveland, LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 6, 2012), BTA Nos. 2010-Q-500, 501, unreported; *Blocksom v. Columbiana Cty. Bd. of Revision* (Apr. 29, 1994), BTA Nos. 1993-H-609 and 1993-M-795, unreported. The owner in this matter therefore must present evidence to overcome the presumption that its purchase from the VA was a sale between typically motivated parties.

[5] Little information about the sale itself was presented by the owner during the BOR hearing; therefore, we must conclude that the owner has failed to meet its burden to demonstrate that the November 2017 purchase from the VA is the best evidence of the subject property's value. We likewise find that the BOR erred in relying on the sale in the absence of such evidence about the sale. In the absence of any other evidence of the subject property's value, we must reinstate the auditor's initial valuation. *South-Western City Schools*, 152 Ohio St.3d 548, 2018-Ohio-919, ¶21; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶24.

[6] Based upon the foregoing, it is the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$79,800

TAXABLE VALUE

$27,930

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-179
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

WHITE PICKET PROPERTIES, LLC
ATTN: ALEX STEWART
P. O. BOX 1082
NEW ALBANY, OH 43054

Entered Tuesday, January 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Columbus City Schools Board of Education ("BOE") appeals to this board from a decision of the Franklin County Board of Revision ("BOR") which reduced the value of parcel number 010-151004-00 for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a single-family home. The auditor initially valued the property at $123,400 for tax year 2017. Owner White Picket Properties LLC filed a complaint against the valuation, seeking a decrease to $66,102 – the amount for which it purchased the property in August 2013. The BOE filed a countercomplaint seeking to maintain the auditor's initial valuation. At the BOR hearing, property manager Alex Stewart testified that the property was purchased in 2013, and that the value of the property should not have roughly doubled since that time. In response to questions from the BOR members, he indicated the property has been rented for $1,099 per month to the same tenant for several years, and that

the roof on the property was replaced after it was purchased. Counsel for the BOE questioned Mr. Stewart, but provided no independent evidence of value.

At its decision hearing, the BOR indicated that it did not consider the 2013 sale of the subject property to be recent to tax lien date. Instead, it relied on an income approach to value, using the subject's actual rent of $1,099 per month and a gross rent multiplier ("GRM") of 93.3, and reduced the subject's total value to$102,600. The BOR included in the statutory transcript the sheet of GRM figures used in its determination.

On appeal to this board, the BOE argues that the BOR's use of a GRM was improper. At this board's hearing, counsel for the BOE objected to the admissibility of the GRM sheet as inadmissible hearsay, noted that the BOE was not able to view the document at or prior to the BOR hearing, and that the author/source of the document was unknown. Counsel also noted that the GRM sheet presents a broad range of values, from 41.0 to 275.7, and it is unclear how the BOR determined that a GRM of 93.3 was most appropriate for the subject property.

The Supreme Court recently explained the burden on an appellant board of education when appealing a decision of a county board of revision in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025:

> "Pursuant to [the *Bedford* rule], 'when the board of revision has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's original valuation,' and the board of education as the appellant before the BTA may not rely on the latter as a default valuation. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ***, ¶ 35 ('*Northpointe*,' after the property owner). Instead, 'the BOR's adopting a new value based on' the owner's evidence has the effect of '"shift[ing] the burden of going forward with evidence to the board of education on appeal to the BTA."' *Id.* at ¶ 41, quoting *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ***, ¶ 16 ('*East Bank*,' after the property owner)." (Footnote and parallel citations omitted.) Id. at ¶6.

However, the court has also held that, when a BOR's decision is based on legal error, the *Bedford* rule does not require adherence to the BOR's decision. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 543, 2018-Ohio-918, ¶13, citing *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375, ¶16-17. See also *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 148 Ohio St.3d 695, 2016-Ohio-8332.

The BOE argues in this matter that the BOR's use of a GRM is improper, citing this board's decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* ("Chess") (Jan. 31, 2018), BTA No. 2014-2780, unreported, on remand from the Supreme Court, 151 Ohio St.3d 458, 2017-Ohio-5823. In remanding that matter to this board, the court directed this board to independently evaluate the basis of the BOR's decision, rather than accord it a presumption of validity. *Chess*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7-8. On remand, this board determined that the BOR's reduction based on a GRM was not supported, noting the lack of testimony/identification of the source of the data used, the lack of information about the expense ratios and income bases for the source properties, and the broad range of GRM numbers on the sheet provided. *Chess* (Jan. 31, 2018), BTA No. 2014-2780, unreported, at 5.

All the same deficiencies are present here. The source of the data upon which the BOR relied is not clear, nor did the county appellees present any evidence or argument before this board to identify the source. We, like the BOE, are unable to determine why neighborhood "043-00" is applicable for the subject property, nor why the GRM of 93.3 was chosen. It is possible that further information or testimony could correlate the GRM chosen by the BOR to the subject property; however, in its absence, we are unable to conclude that the BOR's decision was proper. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188,

2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it."); *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845; *Bd. of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2014-2259, unreported.

In the absence of any other probative evidence of value, we must reinstate the auditor's initial valuation. *South-Western City Schools*, 2018-Ohio-919, ¶21; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*,130 Ohio St.3d 291, 2011-Ohio-5078, ¶24. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$123,400

TAXABLE VALUE

$43,190

OHIO BOARD OF TAX APPEALS

SHERRIE MCGEE, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-780 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHERRIE MCGEE
OWNER
7239 SCOTTWOOD AVENUE
CINCINNATI, OH 45237

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, January 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Sherrie McGee, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 117-0A07-0265-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and any written argument submitted by the parties. We note that McGee submitted additional evidence to this board but waived the opportunity to appear at a hearing. To the extent that these documents were not previously made part of the record during the proceedings before the BOR and were not submitted at a hearing before this board, we will not consider them as part of the record. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

The subject property is improved with a roughly 1,876-square foot, single-family home constructed in 1928. The auditor initially assessed the subject's total true value at $60,170. McGee filed a complaint with the BOR seeking a reduction in value to $23,770. McGee appeared at the BOR hearing to testify in support of her requested reduction. McGee asserted that the subject's value should be reduced to account for its condition, particularly a leak in the roof that has caused water damage. McGee explained that because the repair requires some asbestos remediation, the estimated cost would be roughly $20,000. McGee submitted some photographs of the needed repairs. The BOR also considered a report from the auditor's Real Estate Department, which concluded that McGee had not provided sufficient evidence to meet her burden. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. McGee waived the opportunity to appear before this board to submit additional evidence. The county appellees

appeared before this board, arguing that McGee failed to meet her burden because the evidence she provided did not prove the value sought.

In the present appeal, McGee's burden was to come forward with sufficient evidence not only to show that the auditor's value incorrect, but also to establish that her proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, though it may be in the form of a non-expert owner's opinion of value. Id. at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

In this case, McGee relied on evidence of negative conditions to support her requested reduction. While we acknowledge that the subject's roof is in need of repairs, it is unclear as to the extent that this affects the subject's value. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz*, supra, at ¶17. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). Additionally, even if we were to consider the comparable sales data submitted by McGee with her waiver of appearance, we would find such evidence is similarly deficient because it has not been analyzed and adjusted by an expert qualified to do so. *Schutz*, supra, at ¶16. As such, we find that McGee failed to meet her burden to prove an alternative value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$60,170

TAXABLE VALUE

$21,060

OHIO BOARD OF TAX APPEALS

MARY D SALMON, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1199 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY D SALMON
Represented by:
MARY SALMON
521 TOLLIS PWKY APT 286
BROADVIEW HEIGHTS, OH 44147

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On August 31, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on August 24, 2018. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion a certification that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JO-ANNE M. BEST, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1153

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JO-ANNE M. BEST
OWNER
9480 POTOMAC DR
NORTH ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CORTLAND GUNDLING, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-791, 2018-792, 2018-793

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CORTLAND GUNDLING
7235 CINCINNATI BROOKVILLE ROAD
OKEANA, OH 45053

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Cortland Gundling, appeals three decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 117-0015-0321-00 ("Glen Orchard"), 117-0015-0273-00 ("Newbedford"), and 117-0014-0133-00 ("Stillwell"), for tax year 2017. These consolidated matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

Glen Orchard and Newbedford are improved with two-family residential properties, and Stillwell is a four-unit apartment building. The auditor initially assessed each subject's total true value at $109,060, $125,350, and $108,340, respectively. Gundling filed a complaint with the BOR seeking reductions in value to $40,000, $47,520, and $85,270. Gundling appeared before the BOR to argue that the values of the subject properties should be reduced to account for the conditions in the neighborhood, asserting that the area has a high rate of crime. Gundling also provided sales of properties that he deemed comparable to each subject property. Appraisers from the auditor's Real Estate Department appeared and submitted reports concluding that Gundling had failed to meet his burden of proof for each complaint. The staff appraisers also referenced sales that purportedly supported the auditor's values, though Gundling challenged their comparability to the relevant subject property. The BOR issued decisions maintaining the initially assessed valuations, which led to the present appeals. This board convened a hearing, at which Gundling appeared and submitted appraisal reports opining a value for each property. Gundling also submitted information about other properties similar to the subjects that had their values reduced by the BOR for tax year 2017. The county appellees argued that the appraisals were inadmissible hearsay because the appraiser did not appear at the hearing to testify about his reports. The county appellees further asserted that the appraisals

lacked sufficient explanation regarding the basis for the appraiser's adjustments, and no one was present to answer questions about the appraisals' weaknesses. The county appellees finally maintained that Gundling had failed to present reliable evidence of value at either hearing and the auditor's values should be retained.

As the party challenging the BOR's decisions, Gundling has the burden to prove his right to a reduction in the BOR's values. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. To satisfy this burden, Gundling must produce competent and probative evidence to establish the correct values of the subject properties. Id. Thus, it was incumbent upon Gundling not to merely challenge the valuations of the auditor and BOR, but rather to provide competent and probative evidence that an alternative value reflects the true value of each subject property. *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818.

The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). In this case, the record contains not only the appraisal, but also Gundling's testimony. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. *Schutz*, supra, at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

Initially, we agree with the county appellees that the appraisal reports constitute unreliable hearsay because they were presented without testimony from the appraiser, and the value conclusions should not be given any weight in our analysis. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21 ("*Team Rentals*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. The appraisal of real property is not an exact science and is instead simply an opinion, the reliability of which depends upon the basic competence, skill, and ability demonstrated by the appraiser. *In re Houston*, 12th Dist. Madison No. CA2004-01-003, 2004-Ohio-5091; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), 9th Dist. Medina No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. Even without testimony from the author, where an appraisal contains sufficient indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. In this case, we find that the appraisals fail to meet this standard, as we do not have sufficient information about the credentials of the appraiser to assess his credibility, and therefore the credibility of his results. In addition to the absence of direct testimony about the preparation of the appraisals, unlike the appraisal in *Team Rentals*, there is no evidence that any individual or entity has relied on the appraisal to establish the subject's value. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal).

The lack of testimony or evidence regarding another party's reliance on the appraisals is particularly relevant where we have questions about the appraiser's analysis. For instance, we have questions for the appraiser regarding the conditions surrounding each comparable sale, considering the testimony before the BOR regarding a lack of relevant comparable sales and the appraiser's gross adjustments upwards of 99.1%. This board also has questions about the appraiser's utilization of a gross rent multiplier, an approach we have repeatedly criticized. See, e.g., *Gallick v. Franklin County Bd. of Revision* (Oct. 30, 2017), BTA Nos. 2016-405, et al., unreported, appeal pending 10th Dist. Franklin No. 17AP-811. See, also, *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845 (affirming this board's rejection of an effective gross income multiplier within the sales

comparison approach). With these unanswered questions at the center of the appraiser's analysis, we are unable to rely on any aspect of his reports.

Finally, we acknowledge that it is undisputed that the subject properties are located in an area suffering from high crime rates. Generally, the mere presence of these negative aspects is not sufficient for this board to independently determine an alternative value. See *Schutz*, supra, at ¶17 ("Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential."). Furthermore, as the negative conditions of the neighborhood impact the geographic area in which the subjects are located, the auditor presumably considered them in the initial valuations.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 117-0015-0321-00

TRUE VALUE

$109,060

TAXABLE VALUE

$38,170

PARCEL NUMBER 117-0015-0273-00

TRUE VALUE

$125,350

TAXABLE VALUE

$43,870

PARCEL NUMBER 117-0014-0133-00

TRUE VALUE

$108,340

TAXABLE VALUE

$37,920

OHIO BOARD OF TAX APPEALS

2140 WAYCROSS ROAD, LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-730 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 2140 WAYCROSS ROAD, LLC
Represented by:
JEFFREY WOLF
JWP
11138 READING ROAD
CINCINNATI, OH 45241

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, 2140 Waycross Road, LLC ("Waycross"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 591-0026-0040, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the county appellees' written argument.

The subject property consists of 1.22 acres of land improved with a roughly 7,434 square foot commercial building. The auditor initially assessed the subject's total true value at $299,790. Waycross filed a complaint with the BOR seeking a reduction in value to $170,000 based on an August 2017 sale of the property. Jeff Wolf, member of Waycross, appeared before the BOR to testify and present evidence in support of the requested reduction. Wolf explained that Waycross purchased the subject property from Kanter Investments, LTD ("Kanter") after it had been listed for sale for over a year. Wolf testified that he was the leasing agent for the subject property, when Kanter decided to divest itself of the property. Wolf described his listing and marketing of the property, asserting that Kanter asked him to purchase it after it did not sell during that time because Wolf was familiar with the property and its condition. Wolf testified that Kanter reduced the asking price to $221,250 around January 2017, and this was the final list price prior to the transfer. Wolf also indicated that the property was occupied at the time of the BOR hearing, but the rental rate was below market until Waycross was able to make the necessary repairs. An appraiser from the

auditor's staff was also present at the hearing, and she testified that it was her opinion the sale was not arm's-length because the parties had a prior relationship with a member of Waycross (Mr. Wolf) also acting as the listing agent, and that Kanter did not appear to be a typically-motivated seller. Wolf responded that Kanter was a sophisticated investor and would not have sold the property for less than its true value. The BOR issued a decision reducing the initially assessed valuation to $221,250 based on the final listing price of the property before the transfer. From this decision, Waycross filed the present appeal.

Wolf again appeared at a merit hearing convened before this board, during which he provided additional details about the circumstances of the sale. Wolf noted that during the time it was listed, the property had been in contract twice, and that in both circumstances the prospective buyer withdrew based on the condition of the property. Wolf testified that after the second offer was made by a Dr. Bruder, who withdrew the offer due to deficiencies in the building, Bruder assigned his right to purchase the property to Waycross at the price that had previously been negotiated with Kanter. Wolf also confirmed that there is no shared ownership interest between Kanter and Waycross. The county appellees waived the opportunity to appear at the hearing and instead submitted written argument, asserting that the sale was not arm's-length and that Waycross had not met its burden of proof .

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* , 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, there is no dispute that the property recently sold for $170,000, but the county appellees challenge the arms-length nature of the sale. "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), syllabus. Despite the county appellees' assertions to the contrary, there is no indication that the parties to the transaction were related or not typically-motivated. Wolf testified that the nature of his relationship with the seller was as the listing agent for several of the seller's properties, including the subject property. There was no shared ownership interest among the buyer and the seller, nor was there an indication that this relationship would have caused either to act in a manner not in its own self-interest. Furthermore, the record shows that the negotiated sale price was reached by a potential buyer who chose not to purchase the property after an inspection and then transferred its purchase rights to Waycross. Thus, the negotiations did not take place between Kanter and Wolf, but rather between Kanter and Bruder. As such, we reject the county appellees' contention that the parties were "related" in a way that would invalidate the sale as evidence of value.

Even if the parties had been related, however, we find that the transaction was nevertheless a qualifying sale for purposes of real property valuation. The court has observed that related parties "can and do effect transfers at fair market prices," though such a transaction requires an affirmative demonstration that the price reflects the subject's fair market value irrespective of the parties' relationship. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶33. In this case, it is undisputed that the sale was listed on the open market for over a year and was in contract with two distinct potential buyers before Bruder assigned his interest to Waycross. We find that despite being lower than the seller's asking price, this evidence shows that the property was exposed to the market and sold at an amount consistent with the demand for the subject property.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$170,000

TAXABLE VALUE

$59,500

OHIO BOARD OF TAX APPEALS

LARRY A. AND ALEXA J. PARKER, (et. al.),

Appellant(s),

vs.

BELMONT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-463, 2018-448

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LARRY A. AND ALEXA J. PARKER
OWNER
110 FIRST ALLEY
P.O. BOX 102
BELMONT, OH 43718

For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
Represented by:
DAVID K. LIBERATI
ASSISTANT PROSECUTOR
BELMONT COUNTY
COURTHOUSE ANNEX NO. 1
147-A WEST MAIN ST.
ST. CLAIRSVILLE, OH 43950

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal to this board from a decision of the Belmont County Board of Revision ("BOR") relating to the value of parcel number 09-00473.000 for tax year 2017. We consider the matter upon the notices of appeal, the statutory transcript certified by the auditor pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the county appellees' written argument.

The subject parcel is described on the auditor's property record card as a 24.324-acre tract of vacant land. As appellants explain in their filings and at the hearings before the BOR and this board, a Federal Aviation Administration ("FAA") site, including several aviation control towers, is situated on the property. The FAA site is fenced off and the FAA has an easement/right of way for a roadway extending from the property's access point on State Route 147 to the site, located at the top of a hill.

It appears that, prior to tax year 2017, the parcel benefitted from valuation in accordance with its current agricultultural use ("CAUV"); however, the auditor removed the parcel from the CAUV program in tax year 2017 and assessed on appellants' tax year 2017 tax bill a recoupment of the tax benefits received in the prior three years. The auditor's property record card bears the following relevant notation: "CAUV 17: CAUV REMOVED FIELD CHECK UNSATISFACTORY. NOT ENOUGH COMMERCIAL AGRICULTURAL LAND TO QUALIFY."

In March 2018, appellants filed a complaint against the valuation of the parcel. At the BOR hearing, owner Larry Parker argued that the FAA towers on the property have ruined the property's value. Mr. Parker also testified that removal of coal in prior years by the owner of the coal rights resulted in the filling of cracks and crevices on the property with concrete, rendering it useless for growing crops. He acknowledged that another person harvests hay from the property; however, he indicated no money is received from the harvest and he allows the cutting to keep the property maintained. The members of the BOR noted that a large portion of the tax year 2017 tax bill is attributable to the parcel's removal from the CAUV program and the addition of the recoupment of prior years' CAUV tax benefits. After considering the testimony and evidence presented, the BOR issued a decision determining that the property did not qualify for CAUV reduction and that the recoupment was proper.

On appeal to this board, appellants again argue that the parcel is overvalued and that the parcel should not have been removed from the CAUV program. Mr. Parker testified at this board's hearing, largely reiterating the testimony provided at the BOR hearing.

As the appellants in this matter, the burden is on the owners "to demonstrate that the value [they advocate] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

At the outset, we question whether the underlying complaint properly vested jurisdiction in the BOR to consider the valuation of the property, as no opinion of value was indicated on the complaint at line 8. Failure to state an opinion of value on a complaint has been found by the Supreme Court to run to the "core of procedural efficiency," and is therefore jurisdictional. *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, ¶16.

However, even if the complaint had indicated a value and properly established jurisdiction with the BOR over the valuation of the property, we find that appellants failed to meet their burden of proof. This board acknowledges the unique aspects of this property, i.e., the restrictions imposed by the FAA as a result of the location of its towers on the property, the inability to till the land due to concrete in the ground used to stabilize the property after removal of coal, the topography of the parcel, and the inability to construct a new access point. However, this board's task, and the task of the county auditor, is to determine the true value in money of the real property. As the Supreme Court recently noted in *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶17: "Without affirmative evidence of the property's value or specific analysis of how the property's condition affects its value, any evidence of defects in the property is inconsequential." See also *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7 (without evidence establishing how defects might have impacted the property value, "the list of defects are simply variables in search of an equation."); *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). Appellants failed to present any analysis, e.g., an appraisal, demonstrating *how* the defects affect the subject parcel's value. In the absence of such evidence, we are unable to determine that appellants have met their burden to prove a value different than that arrived at by the county auditor.

Further, appellants cite to the taxes paid by other, nearby properties in support of their request for a reduced value. We initially note that it is unclear whether the parcels cited by appellants benefit from reductions in value pursuant to the CAUV program. Further, taxes levied on properties may vary based on their taxing district, owner-occupancy reductions, homestead exemptions, etc. Even if all parcels were taxed at the same rate, without reductions, the Supreme Court has found that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different matter." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). Finally, although Mr. Parker stated that he is paying taxes on the U.S. government's property, it is clear from the auditor's property record card that there are no improvements on the parcel that are subject to real property

taxation. Further, the auditor's records reflect 0.242 acres of "right of way" at $0 value. Indeed, a review of the auditor's records indicates that the FAA improvements are assessed on a separate parcel (parcel number 09-00473.001) consisting of 0.918 acres.

While we recognize the unique circumstances of the subject parcel, we are unable to independently determine a value different than that originally determined by the county auditor ($51,570) upon the evidence presented.

We now turn to the auditor's decision to remove the subject parcel from the CAUV program for 2017 and recoup the CAUV tax benefits received in the prior three years. R.C. 5713.30 provides an alternative value for land devoted exclusively to agricultural use based on its current agricultural use, rather than market value. "Under the authorizing [constitutional] amendment and implementing statutes, 'the auditor disregards the highest and best use of the property and values the property according to its current agricultural use,' a procedure that 'usually results in a lower valuation and a lower property tax.' *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142, ***." (Parallel citation omitted.) *Fife v.Greene Cty. Bd. of Revision*, 120 Ohio St.3d 442, 2008-Ohio-6786, ¶4. Land is "devoted exclusively to agricultural use" when it is devoted to commercial agriculture, e.g., commercial animal husbandry or the production of field crops. For tracts less than ten acres, a CAUV applicant must show that the commercial agricultural activities on the property produced an average gross income of at least $2,500 during the three calendar years prior to the year of application. R.C. 5713.30(A)(2). When an auditor determines that a property no longer qualifies for participation in the CAUV program, the property is considered to have been "converted" and is then subject to recoupment of the tax savings resulting from agricultural valuation for the prior three years. R.C. 5713.34, 5713.35.

In their brief on appeal, the county appellees explain that the subject property was removed from the CAUV program for 2017, after "a review of the property indicated that only 8-9 acres were utilized for farming." Appellees' Brief in Support at 2. Appellants argue that agricultural activities, i.e., pasture and hay, actually occur on more than ten acres. H.R. at 23. However, appellants have presented no evidence that any *commercial* agriculture occurs on the property, regardless of its size. Mr. Parker testified at this board's hearing that no money is received from the harvesting of hay on the property by a neighbor. Id. at 23-24. In *Chrisman v. Licking Cty. Bd. of Revision* (Sept. 19, 1986), BTA No. 1985-C-753, unreported, this board acknowledged that the CAUV statutes do not define the term "commercial production." We construed the phrase to mean "the act or process of making something, doing an act or operating an enterprise *primarily for profit*." (Emphasis added.) Id. at 29. The record before us contains no evidence that any commercial agriculture is conducted on the subject property. We therefore find it does not qualify for CAUV reduction.

Based upon the foregoing, we find that appellants have failed to meet their burden to prove a value different from that originally determined by the auditor, and to prove that the auditor's removal of the property from the CAUV program was in error. We therefore affirm the determination of the Belmont County Board of Revision. It is the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$51,570

TAXABLE VALUE

$18,050

OHIO BOARD OF TAX APPEALS

BEFF LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1888

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BEFF LLC
Represented by:
HENRY CHAN
MEMBER
570 PIERMONT RD SUITE 111
CLOSTER, NJ 07624

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. ***

R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BARBARA T. SLEDZ, (et. al.),

Appellant(s), vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.), Appellee(s).

CASE NO(S). 2018-1250

(REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - BARBARA T. SLEDZ
19336 LAUREL AVE.
SECOND FLOOR
ROCKY RIVER, OH 44116

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PAOLO AND HEALEY TATANGELO, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1188

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAOLO AND HEALEY TATANGELO
Represented by:
PAOLO TATANGELO
17048 HUNTING MEADOWS DR.
STRONGSVILLE, OH 44136

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

At a hearing before this board, the owner provided documentation demonstrating that they mailed a copy of the notice of appeal to the county's assistant prosecutor. Initially, we note that "although a county prosecutor acts as counsel for the BOR, the prosecuting attorney is not authorized to accept a notice of

appeal in lieu of filing such notice with the BOR." *Kinat v. Lake Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2010-Y-1213, 2012 Ohio Tax LEXIS 4824, unreported, citing *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision* (1998), 80 Ohio St.3d 621, 1998 Ohio 657, 687 N.E.2d 746. Moreover, the owners did not provide any proof that the notice of appeal was received by the BOR. As the Supreme Court noted in *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, P10, 772 N.E.2d 1165, (quoting *United States v. Lombardo* (1916), 241 U.S. 73, 76, 36 S. Ct. 508, 60 L. Ed. 897) '[a] paper is filed when it is delivered to the proper official and by him received and filed. See, also, *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, P21, 16 N.E.3d 573.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. Accordingly, the county appellees' motion is well taken. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PREMIER ARHAUS LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1619 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PREMIER ARHAUS LLC
Represented by:
MICHELE R. YEH
MICHELE R. YEH, ATTORNEY AT LAW
7811 PLANTATION DR.
BRECKSVILLE, OH 44141

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

HUDSON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

Entered Wednesday, January 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate

statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VIRGIL W. HUMPHREYS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1375, 2018-1376

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VIRGIL W. HUMPHREYS
Represented by:
VIRGIL HUMPREYS
OWNER
333 WALLACE DR
BEREA, OH 44017

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, January 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these consolidated matters for failure to file notice of the appeals with the county board of revision ("BOR"), and as premature, as no complaints were filed with the BOR prior to the filing of these appeals. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motions, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR in either appeal. Moreover, there is no indication that any complaint against the valuation of either subject parcel was filed with the BOR in accordance with R.C. 5715.19, and, thus, the BOR has issued no decisions on the value of the parcels from which appellant could appeal to this board. It therefore appears that this board lacks jurisdiction over these matters.

Upon consideration of the existing record, and for the reasons stated in the motions, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

CANTON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1882
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CANTON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

GRISSOM FAMILY LAND AND CATTLE LP
Represented by:
STEPHEN SWAIM
ATTORNEY AT LAW
370 SOUTH 5TH ST., #G7
COLUMBUS, OH 43215

Entered Friday, January 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 10007056, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The auditor initially valued the subject property at $819,800. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $5,215,150 to be consistent with the price at which it transferred in August 2016. The property owner filed a countercomplaint, which objected to the request.

At the BOR hearing on the matter, both the BOE and property owner appeared through counsel to submit

argument and/or evidence in support of their respective positions. In its presentation, the BOE submitted a conveyance-fee statement and a limited-warranty deed, which memorialized the $5,215,150 of the subject property from WXZ Retail Group/Canton RA to the property owner in August 2016. Based upon the documents, the BOE requested that the BOR value the subject at its sale price. In its presentation, the property owner submitted a lease agreement dated June 22, 2015, though the property owner acknowledged that no one was available to authenticate the lease. The BOE questioned the accuracy of a staff appraiser's report that asserted that the building being constructed on the subject property was only 75% complete on the tax lien date. The BOR decision hearing indicated that the BOR relied upon the staff appraiser's communication with members of the county auditor's office to confirm that the building was 75% complete on the tax lien date and was 100% complete on January 1, 2017. The BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued.

At the hearing before this board, only the BOE participated. In doing so, the BOE argued that the record was devoid of any competent, credible, and probative evidence to support the BOR's decision, particularly on the issue of the level of completion of the building on the tax lien date. Based upon its presentation, the BOE requested that we overturn the BOR's decision and value the subject property consistent with the subject sale.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129, 130 (1977). In instances where a property has not been the subject of a recent, arm's-length sale, this board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

We begin our analysis with the subject sale. The presentation of the sale documents created a rebuttable presumption that the subject sale was a recent, arm's-length transfer indicative of the subject property's value. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The burden then shifts to the opponent of the subject sale to provide evidence to rebut such sale. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415.

We first consider whether the evidence submitted by the property owner rebutted the subject sale. By presenting the partially executed lease that *may* have been in place on the tax lien date, the property owner seemingly implied that the subject sale included the value of such lease. The Supreme Court has found that there are at least three factors that must be considered when determining whether "an existing lease affect[ed] the sale price." *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-3856, at ¶10. Those factors include whether the underlying lease is above, at, or below market rent; whether the creditworthiness of the tenant affected the sale; and whether the tenant is responsible for the expenses related to the subject property. See *Terraza 8*, supra, at ¶34; *GC Net Lease*, supra, at ¶10. Here, the property owner failed to provide any evidence of market rents such that this board could determine that the underlying lease was above, at, or below market rents and failed to provide evidence that the creditworthiness of the tenant was a factor in the subject sale. As such, we find that lease does not require us to reject the subject sale.

We also note that the property owner did not present any witnesses at the BOR hearing. Instead, the property owner's counsel detailed his understanding of important facts and circumstances related to the underlying lease and/or subject sale. We have repeatedly held that "[s]tatements of counsel are not evidence." *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998).

We next consider whether the evidence relied upon by the BOR rebutted the subject sale. As noted above, the BOR relied upon a staff appraiser's recommendation and communication with the county auditor's staff. We note that the record contains an email exchange between Melissa Ackerman and Gary Ziegler, which discussed the levels of completion of the building on the tax lien date. In *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, at ¶15, the Supreme Court held that this board "erred in failing to evaluate the probative character of the deputy auditor's report before accepting it as a basis for the BOR's [decision]." Therefore, we proceed to consider whether the staff appraiser's recommendation, behind the scenes communications, and email exchange between Ackerman and Ziegler were competent and probative evidence to justify the BOR's decision to reject the subject sale.

As an initial matter, as we review the staff appraiser's recommendation, we note that it does not support the BOR's decision to retain the subject property's initially assessed value. In fact, the staff appraiser recommended that the subject sale be accepted as the subject property's value for tax year 2016. Thus, it is unclear how the staff appraiser's recommendation to accept the subject sale supported the BOR's decision *not* to accept the subject sale as indicative of value. Further review of the staff appraiser's recommendation demonstrates that the author considered the following: "Emailed the seller contacts (James R. Wymer[;] As of 1-1-16 the Rite Aid is 75% complete (100% complete as of 1-1-17)[;] No separation of the paid items other than real property noted on the legal conveyance form (Line E)[;] Across the street from the newly built Canton South High School[;] Legal combine 9/28/2015 from parcels 10002836 and 10007029[;] On market for 7 months, buyer bought using 1031 Exchange[;] Xceligent noted a newly signed 20 year term lease, with 6 five year options[.]" However, because the staff appraiser failed to testify at the BOR hearing, the record is devoid of any indication of how these various factors led the staff appraiser's conclusion. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶19 (describing that the lack of the appraiser's testimony as "the absence of potentially material portions of the record."). Likewise, we have no information about the behind the scenes communications between the BOR members and county auditor's staff. Most important, we have no information about how those communications supported the BOR's decision to reject the subject sale.

Though we acknowledge the email communication between Ackerman and Ziegler, which stated that the building situsued on the subject property was 75% complete on the tax lien date, was consistent with the staff appraiser's recommendation that noted that the building was 75% complete on the tax lien date, we do not find such conclusion to be competent, credible, or probative. There is no information about the basis for such conclusion and such conclusion conflicts with other information in the record. Notably, the property record card provides information about the building, under the "Primary Structure" heading, and specifically notes that the building was built in 2015. See R.C. 5713.03 (the property record is the place where the county auditor should "record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.").

In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to rebut the presumption that the subject sale was a recent, arm's-length transfer. Absent an affirmative demonstration that the $5,215,150 sale in August 2016 was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject property's value as of tax lien date and that the BOR's decision was in error. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7 ("[O]ur case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2016:

TRUE VALUE

$5,215,150

TAXABLE VALUE

$1,825,300

OHIO BOARD OF TAX APPEALS

RAVENNA SCHOOL DISTRICT BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1497
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
PORTAGE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - RAVENNA SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - PORTAGE COUNTY BOARD OF REVISION
Represented by:
ALLISON BLAKEMORE MANAYAN
ASSISTANT PROSECUTING ATTORNEY
PORTAGE COUNTY
241 SOUTH CHESTNUT STREET
RAVENNA, OH 44266

UMH OH BUCKEYE LLC
Represented by:
JOHN W. MONROE
MANSOUR GAVIN L.P.A.
1001 LAKESIDE AVENUE, SUITE 1400
CLEVELAND, OH 44113

Entered Friday, January 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 29-341-00-00-003-000, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and the property owner's pre-hearing statement.

The auditor initially valued the subject property, a mobile home park, at $3,609,500 for tax year 2016. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $1,195,000. The BOE filed a countercomplaint objecting to the request.

At the BOR hearing on the matter, the property owner submitted the testimony, via telephone, of real estate

broker Gary Cooper, who testified via telephone. Though he testified that he is not an appraiser, Mr. Cooper indicated he determined the subject property's value to be $1,195,000. The date of his valuation is unclear; however, he testified that he did not opine value as of tax lien date. The property owner also presented an excerpt of Mr. Cooper's larger report, titled "Financial Valuation Model." The BOE cross-examined Cooper about his qualifications and the data and methodologies used to derive his conclusion of value. Based upon its presentation, the property owner requested that the BOR value the subject property consistent with Cooper's opinion of value, $1,195,000. In its presentation, the BOE submitted a packet of documents, which demonstrated the $3,609,500 transfer of the subject property in March 2014. Based upon its presentation, the BOE requested that the BOR value the subject property consistent with the subject sale. The BOR voted to value the subject property at $1,908,000 and subsequently issued a written decision to that effect. This appeal ensued.

At the hearing before this board, only the property owner appeared to supplement the record with additional evidence. In doing so, the property owner submitted the testimony of Meredith Hedge, who testified about the subject property based upon her employment as an office coordinator (prior to February 2016) and property manager (since February 2016) associated with the subject property. She testified that there was significant deferred maintenance to the mobile home community, which had not be remediated as of the tax lien date. She also testified that the mobile home community had 141 pads, of which 113 pads were occupied with mobile homes (fifteen of the mobiles homes were owned by the property owner), as of the tax lien date. The property owner argued that the parties to the subject sale did not allocate the $3,609,500 sale price to items other than realty, i.e., mobile homes and goodwill, and, therefore, this board should reject the subject sale.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415; *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997). We review the issue of whether the sale price establishes the subject property's value de novo. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

As an initial matter, we note that the parties referenced a tax year 2014 BOR decision, asserting that the BOR had previously considered the subject sale and determined that it was reflective of the subject property's value. However, the record of that matter has not been provided to us and we are unable to determine whether collateral estoppel applies to this matter. *Julia Realty, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 262, 2018-Ohio-2415.

We begin our analysis with the subject sale. The limited warranty deed and notation of the subject sale on the property record card created a rebuttable presumption that the subject sale was a recent, arm's-length transfer indicative of the subject property's value. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. Therefore, the burden is on the property owner to demonstrate why the subject sale should be rejected. In an effort to satisfy this burden, the property owner primarily argued that that the subject sale was not indicative of the subject property's value because it failed to allocate portions of the sale price to items other than realty, i.e., mobile homes and goodwill, and because Cooper opined to a different value. Based upon our review of the record and relevant case law, we reject the property owner's position for a number of reasons.

First, the property owner has submitted no competent, credible, and probative evidence to demonstrate that the subject sale included items other than realty. The property owner did not submit any document that allocated any portion of the subject sale to items other than the subject property, such as a purchase agreement. No one with firsthand knowledge of the subject sale testified about the items included in such sale. Cooper testified that he lacked firsthand knowledge of the subject sale. Though the property owner submitted a pre-hearing statement that referred to testimony to be given at this board's hearing by an officer

of the property owner, Bob Van Schuyver, no such testimony was actually provided. Only Hedge testified at this board's hearing and she provided no testimony about the subject sale. Although counsel for the property owner raised the *possibility* that the subject sale included items other than realty, unsworn "statements of counsel are not evidence." *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). See, also *RNG Props., Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, at ¶28 ("In its brief, RNG states that '[s]ometime prior to the 2010 sale of the subject parcels, four of the subject parcels were consolidated' ***. This mere assertion of counsel is, however, unsupported by any evidence in the record."). "Mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15. As such, we must conclude that the property owner failed to demonstrate that the subject sale included items other than the subject property. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, at ¶33 (court finding that a party must show that goodwill is "a separable asset that is distinct from the realty.")

Second, we do not find Cooper competent to testify as an expert qualified to render an opinion on the subject property's value. At the BOR hearing, Cooper acknowledged that he was not an appraiser and was not offering an expert opinion on the subject property's value. This board has repeatedly rejected opinions of value provided by brokers, rather than real estate appraisers. This board has often cited to the Appraisal of Real Estate in rejecting opinions of value from non-appraiser real estate professionals: "Real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience. *** As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." The Appraisal of Real Estate (13th Ed.2008) 8-9. See also *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, at ¶26. Compare *Steak'n Shake, Inc. v. Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836, at ¶26.

Third, we do not find Cooper's testimony and/or the excerpts of his written analysis of the subject property's value to be competent, credible, and probative evidence of value. Cooper's written analysis omits several important aspects of a typical appraisal report, including a highest and best use analysis, market data to support the many aspects of an income approach to value, and adjustments to the comparable properties under the sales comparison approach to value. For example, Cooper relied on the subject property's actual income and expenses without demonstrating that the subject property's performance reflected market income and expenses. We note that there is a footnote on page sixteen of the Financial Model Valuation document, which notes that "[a]ny expense that differs was over-ridden with an industry standard[.]" However, there was no indication which expense(s) reflected the industry standard and whether the industry standard reflected the market in which the subject property would have competed on the tax lien date. In *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996), the court commented that "an appraiser may employ actual income as reduced by actual expenses *if both amounts conform to market*." (Emphasis added.) Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id. We are unable to do given the limited evidence presented. Moreover, a review of the sales comparison approach to value indicates that Cooper simply averaged the sales prices of the comparable sales. This board has previously found "the simple averaging of *** sales to be suspect." *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported.

Fourth, Cooper's opinion of value was not related to the tax lien date. At the BOR hearing, as he commenced his testimony, Cooper noted that his opinion of value was not as of the tax lien date of January 1, 2016. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of" the tax lien date in issue. See, e.g., *Olmsted Falls*, supra, at 555 ("We emphasize that the BTA '*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.". (Parallel citations omitted.)).

Having found the property owner's evidence to be insufficient to justify a reduction to the subject property's value, we now turn to the BOR's decision to reduce the subject property's value to $1,908,000. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶15 ("It is clear from the BTA's decision that it failed to conduct an independent review of the evidence to determine the value of the subject property. *** Instead, the BTA merely deferred to the BOR, treating the BOR's assignment of value as presumptively valid."). We have already concluded that the evidence presented to the BOR was not competent and probative evidence of the subject property's value. As a result, such evidence could not have been a proper basis for the BOR's decision to reduce the subject property's value. Furthermore, we are unable to discern how the BOR arrived at its valuation decision given that it did not reflect any of Cooper's value conclusions under the income and sales comparison analysis. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, at 35, ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it."). The record contains no other explanation of the BOR's decision, nor do we find any other probative evidence to support its reduced valuation.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the BOE presented evidence that the subject property was the subject of a recent, arm's-length sale. Neither the property owner nor the county appellees submitted competent, credible, and probative evidence to rebut the subject sale. Absent an affirmative demonstration that the $3,609,500 sale in March 2014 was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject property's value as of tax lien date and that the BOR's decision was in error. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7 ("[O]ur case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

It is therefore the order of this board that the subject property's true and taxable values are as follows as of January 1, 2016:

TRUE VALUE

$3,609,500

TAXABLE VALUE

$1,263,330

OHIO BOARD OF TAX APPEALS

PETRICK BUILDERS LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1861

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK BUILDERS LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, January 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The county appellees move to dismiss this matter on the basis it was not timely filed with this board, and it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

[2] R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

[3] The record does not demonstrate that appellant filed such notice with the BOR. Moreover, appellant filed

his appeal with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LINDA TOTH, (et. al.),

Appellant(s), vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.), Appellee(s).

CASE NO(S). 2018-1665

REAL PROPERTY TAX

DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - LINDA TOTH
12505 COIT ROAD
BRATENAHL, OH 44108

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, January 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter because notice of the appeal was not filed with the Cuyahoga County Board of Revision ("BOR") as is required by R.C. 5717.01. Appellant has not responded to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and* the BOR within *thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The statutory transcript certified by the county fiscal officer indicates that the BOR did not receive notice of this appeal from appellant. Accordingly, appellant has failed to follow the statutorily-required procedure to appeal from the BOR's decision. The county appellees' motion is well taken and this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LASHON WRIGHT, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1996 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LASHON WRIGHT
4312 MARTIN LUTHER KING JR. DRIVE
CLEVELAND, OH 44105

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, January 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board, and it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of the appeal was filed with this board more than five years after the mailing of the BOR's decision. Further, the record does not demonstrate that appellant

filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VLADIMIR VOJNOVIC, AN UNMARRIED INDIVIDUAL, (et. al.),	CASE NO(S). 2018-1441
Appellant(s),	(REAL PROPERTY TAX)
vs.	ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - VLADIMIR VOJNOVIC, AN UNMARRIED INDIVIDUAL
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

WEST CARROLLTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, January 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is before the Board of Tax Appeals upon the filing of a motion to remand with instructions to dismiss filed by the appellee board of education ("BOE"). By way of the motion, the BOE argues that the Montgomery County Board of Revision ("BOR") lacked jurisdiction to consider the underlying complaint because the subject property, parcel number K47 18441 0041, was exempt from property tax and, therefore, did not appear on the general tax list and duplicate for tax year 2017. Neither the property owner nor the county appellees filed a response to the BOE's motion within the time period established by Ohio Adm. Code 5717-1-13(B).

County boards of revision are creatures of statute and, as such, only have the limited powers conferred by

statute. *Swetland Co. v. Evatt*, 130 Ohio St. 6 (1941); *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363 (2000). R.C. 5715.11 sets forth the jurisdiction of county boards of revision, which provides in relevant part: "The county board of revision shall hear complaints relating to the valuation or assessment of real property *as the same appears upon the tax duplicate of the then current year*." (Emphasis added.) To properly invoke the jurisdiction of a board of revision, a complainant must comply with the requirements of R.C. 5715.19. In relevant part, R.C. 5715.19(A)(1) identifies the specific determinations of the county auditor that may be challenged and the time for such challenges. R.C. 5715.19 (A)(1)(d) provides: "The determination of the total valuation or assessment of any parcel *that appears on the tax list*, except parcels assessed by the tax commissioner pursuant to section 5726.06 of the Revised Code." (Emphasis added.) Furthermore, the tax list is created by a county auditor and is comprised of real and public utility property, subject to ad valorem tax, located in the county. R.C. 319.28. Conversely, a county auditor must also create a list of real property exempt from ad valorem tax, i.e., the "exempt list." R.C. 5713.07.

In this matter, the BOE attached to its motion tax information about the subject property from the county treasurer's website, to demonstrate that the subject property was exempt from property tax for tax year 2017 and not included on the general tax list and duplicate for that year. According to the motion and its attachments, the subject property was classified as "698" under "land use code," and such code corresponds to "other exempt property." A review of the property record card confirms that the subject property was classified as "other exempt property" with land use code "698." When considered together, there is a strong inference that the subject property was exempt from property tax for tax year 2017. Neither the current property owner nor the county appellees came forward to dispute the subject property's exempt status. Thus, we conclude that it is undisputed that the subject property did not appear on the county auditor's general tax list and duplicate for tax year 2017 and that the subject property was likely listed on the exempt list for that year. We have previously held that "[i]f property does not appear on such [tax] duplicate, then a Board of Revision has no jurisdiction to consider its value." *Bd. of Edn. of the Dublin City School Dist. v. Franklin Cty. Bd. of Revision* (Jan. 14, 2000), BTA Nos. 1997-M-960 et seq., unreported, at 8.

Because the subject property did not appear on the county auditor's tax list and duplicate, the BOR did not have jurisdiction to consider the merits of the underlying decrease complaint and the BOE's counter-complaint. Accordingly, we grant the BOE's motion and remand this matter to the BOR with instructions to vacate its determination for tax year 2017 and to dismiss the underlying complaint and counter-complaint.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-2012
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

LOWE'S HOME CENTERS, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Tuesday, January 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellee property owner moves to dismiss this matter on the basis that it filed an earlier appeal from the same decision with the Franklin County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

On November 16, 2018, the appellant board of education filed an appeal with this board from a decision issued by the Franklin County Board of Revision, i.e., BOR No. 17-005845. The owner's motion argues that it filed an appeal from the same decision with the Franklin County Court of Common Pleas on October 30, 2018. Attached to the owner's motion to dismiss is documentation of such filing.

R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal." The record before us demonstrates that the owner filed its appeal with the court of common pleas prior to appellant filing with this board.

Upon review of the existing record, the owner's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LICKING HEIGHTS LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-2011
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - LICKING HEIGHTS LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

LOWE'S HOME CENTERS, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Tuesday, January 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellee property owner moves to dismiss this matter on the basis that it filed an earlier appeal from the same decision with the Franklin County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

On November 16, 2018, the appellant board of education filed an appeal with this board from a decision issued by the Franklin County Board of Revision, i.e., BOR No. 17-005848. The owner's motion argues that it filed an appeal from the same decision with the Franklin County Court of Common Pleas on October 30, 2018. Attached to the owner's motion to dismiss is documentation of such filing.

R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal." The record before us demonstrates that the owner filed its appeal with the court of common pleas before appellant filed this appeal with this board.

Upon review of the existing record, the owner's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-2010
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

STORE MASTER FUNDING VI, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Tuesday, January 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellee property owner moves to dismiss this matter on the basis that it filed an earlier appeal from the same decision with the Franklin County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

On November 16, 2018, the appellant board of education filed an appeal with this board from a decision issued by the Franklin County Board of Revision, i.e., BOR No. 17-005850. The owner's motion argues that it filed an appeal from the same decision with the Franklin County Court of Common Pleas on October 30, 2018. Attached to the owner's motion to dismiss is documentation of such filing.

R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal." The record before us demonstrates that the owner filed its appeal with the court of common pleas prior to appellant filing with this board.

Upon review of the existing record, the owner's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HILLIARD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-2009
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - HILLIARD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

ARCP LO HILLIARD OH, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Wednesday, January 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellee property owner moves to dismiss this matter on the basis that it filed an earlier appeal from the same decision with the Franklin County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

On November 16, 2018, the appellant board of education filed an appeal with this board from a decision issued by the Franklin County Board of Revision, i.e., BOR No. 17-005856. The owner's motion argues that it filed an appeal from the same decision with the Franklin County Court of Common Pleas on October 30, 2018. Attached to the owner's motion to dismiss is documentation of such filing.

R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal." The record before us demonstrates that the owner filed its appeal with the court of common pleas prior to appellant filing with this board.

Upon review of the existing record, the owner's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-2014
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

NITNEIL CORPORATION: VAL T. SAPRA & PUSHPA SAPRA
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Friday, January 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellee property owner moves to dismiss this matter on the basis that it filed an earlier appeal from the same decision with the Franklin County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

On November 16, 2018, the appellant board of education filed an appeal with this board from a decision issued by the Franklin County Board of Revision, i.e., BOR No. 17-003109. The owner's motion argues that it filed an appeal from the same decision with the Franklin County Court of Common Pleas on November 6, 2018. Attached to the owner's motion to dismiss is documentation of such filing.

R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal." The record before us demonstrates that the owner filed its appeal with the court of common pleas prior to appellant filing with this board.

Upon review of the existing record, the owner's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ABDELMUNEN ABUZARICH, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1595

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ABDELMUNEN ABUZAHRICH
Represented by:
ABDELMUNEM ABUZAHRICH
OWNER
28550 HUNTERS RIDGE LANE
OLMSTED FALL, OH 44138

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, January 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On October 3, 2018, the appellant filed a DTE Form 1, complaint against the valuation of real property, with this board. The date-stamp space on the upper corner of the document was blank suggesting it was never filed with the BOR. No BOR decision was filed with the DTE Form 1. On October 30, 2018, the BOR filed a motion to dismiss stating appellant had never filed a valuation complaint. Therefore, according to the BOR, no appealable BOR decision was issued. Appellant did not respond to the motion to dismiss.

R.C. 5703.02 grants this board the authority to hear and determine appeals from decisions of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PETRICK INVESTMENTS 2 LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1865 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK INVESTMENTS 2 LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that

the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PETRICK BUILDERS LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1864

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK BUILDERS LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that

the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JACK PETRICK, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1863

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this

board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ABBEY CHURCH VILLAGE (TC2) HOUSING LIMITED PARTNERSHIP, (et. al.),

Appellant(s), vs.

FRANKLIN COUNTY BOARD OF REVISION,
(et. al.), Appellee(s).

CASE NO(S). 2017-1055

REAL PROPERTY TAX)

DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - ABBEY CHURCH VILLAGE (TC2) HOUSING LIMITED PARTNERSHIP
Represented by:
TIMOTHY A. PIRTLE
ATTORNEY AT LAW
2935 KENNY ROAD, SUITE 225
COLUMBUS, OH 43221

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

DUBLIN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, January 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Abbey Church Village (TC2) Housing Limited Partnership ("Abbey Church"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 590-221937-00, 590-221938-00, and 590-230760-00, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the parties' written arguments.

The subject property is improved with a 160-unit apartment complex that provides affordable housing to its residents in exchange for low income housing tax credits ("LIHTC"). For some units, the rent is paid in part

by Section 8 tenant-based assistance subsidies from the Department of Housing and Urban Development ("HUD"). The auditor initially assessed the subject's total true value at $4,970,000. The appellee board of education ("BOE") filed a complaint with the BOR seeking an increase in value to $8,149,000. The BOR convened a hearing, at which the BOE presented evidence that Abbey Church purchased the subject property on September 27, 2016 for $8,149,000 from Abbey Church Village Limited Partnership and argued that the sale price is the best evidence of the value of the subject property as of the tax lien date. Abbey Church argued that the sale was not arm's-length and, therefore, not reliable evidence of value, presenting testimony from Matt Rule, Senior Vice President of Housing Development for National Church Residences ("NCR"). Rule testified regarding the circumstances of the sale, particularly that NCR was majority owner of the general partner for both the buying and selling limited partnerships. Rule indicated that he facilitated the transaction on behalf of both entities because the purpose was solely to obtain financing for new construction to renovate the subject property and no cash or profit went to the seller. Rule acknowledged that after the sale, the new limited partners were the majority owners for purposes obtaining the benefits of the tax credits and depreciation of the property, but explained that NCR maintained its role managing the project and assumed the risk of any losses, as limited partners are involved only to raise funds and are prohibited from active participation in the management of the property.

The BOR concluded that NCR's 0.01% ownership interest after the sale was insignificant and not enough to rebut the sale as being among related parties. The BOR issued a decision increasing the initially assessed valuation to $8,149,000, which Abbey Church appealed to this board.

This board convened a hearing, at which Abbey Church again presented testimony from Rule about the sale and the ownership structure. Rule also testified that the sale price was established based on an appraisal performed by VSI Appraisal Group, which was necessary to obtain additional financing for the project. Abbey Church then offered an appraisal from Donald E. Miller II, MAI, who opined that the subject's true value was $3,850,000 as of January 1, 2016. Miller explained that he considered the rent restrictions in place on the tax lien date, specifically that units were restricted to rents at a level which is affordable to persons with incomes at or below 45% or 50% of area median income ("AMI"), adjusted for family size. Miller acknowledged that the project receives roughly $300,000 per year from portable tenant-based subsidies, explaining that they do not allow the landlord to charge rent above the restricted amount, but do allow the landlord to charge rent at the upper end of the range to individuals who may not otherwise be able to afford the unit. Miller indicated that he attempted to exclude the effects of these subsidies from his analysis by analyzing the rents received from individuals who do not receive these subsidies in other LIHTC projects that do not benefit from any additional project-based subsidies. By using market data from other LIHTC projects for both income and expenses, Miller concluded to a net operating income ("NOI") of $414,123, to which he applied a capitalization rate of 7.5%, plus a 3.19% tax additur, for an overall indicated value of $3,870,000. Miller then deducted $18,378 for furniture, fixtures, and equipment ("FF&E"), for a true value of $3,850,000 (rounded) for the subject real property.

The BOE presented testimony and a written report from appraiser Thomas D. Sprout, MAI, who opined that the subject's true value was $9,875,000 as of January 1, 2016. Sprout acknowledged that he had only personally viewed the interior of the subject property after a major renovation that took place beginning in late 2016, but that he was very familiar with the area, had seen the exterior of the property prior to the renovations, and was able to review the VSI appraisal that included interior photographs taken prior to the remodel. Sprout valued the subject property as if it were a conventional, non-restricted market-based project located within the Dublin City School District. For his income approach, Sprout looked at other projects in the immediate geographical area to estimate market rent for the subject property based on its condition before the remodel, and calculated expenses verified by his office for other non-restricted apartment projects. Sprout concluded to a NOI of $1,016,324, to which he applied a capitalization rate of 7%, plus a 3.19% tax additur, for an overall indicated value of $9,975,000 (rounded). Sprout deducted $80,000 for FF&E, for a true value of $9,895,000. Sprout also performed the sales comparison approach, which resulted in a value range of $9,920,000 to $10,565,000, though he gave the income approach primary weight.

Sprout then reviewed the VSI appraisal, which was performed by an MAI appraiser who concluded to opinions of value as of October 29, 2015, both as though it were unrestricted and based on restricted rents, though it considered a restriction at 60% AMI based on future plans, which is higher than the maximum rents the property could receive on the tax lien date. Sprout indicated that the $8,149,000 value conclusion as restricted provided a credible opinion, assuming that the subject's restriction increased to the 60% AMI level, but that the value would be lower with the 45% and 50% AMI restrictions in place. Sprout further testified that the value conclusion as if it were unrestricted ($11,435,000) was too high because it was about 15% too optimistic about potential rental income.

Abbey Church argues that this board should disregard the September 2016 transfer because it was not an arm's-length sale of the subject property. Abbey Church further maintains that this board should rely on Miller's appraisal to establish the value of the subject property because unlike Sprout, Miller properly considered the effect of the LIHTC restrictions in his analysis. The BOE has abandoned its reliance on the September sale, conceding that the sale price does not provide an accurate value for the subject real property. Instead, the BOE argues that this board must rely on Sprout's appraisal because it is the only evidence in the record that strictly complies with current law in the valuation of subsidized properties and relies exclusively on market data that disregards both the subsidies and restrictions.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). Although it is undisputed that the property transferred within nine months of the tax lien date and the sale price formed the basis for the BOR's decision, none of the parties currently relies on the sale as evidence of value on appeal. Nevertheless, this Board must consider the reliability of the sale in our independent review of the evidence. See *Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 152 Ohio St.3d 182, 2017-Ohio-8819. Additionally, although the BOR relied on the sale, because a central issue in this appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. Due to the circumstances of the sale, however, we find that sale was completed as a financing mechanism for NCR, the parties were not typically-motivated, and the transaction was not arm's-length. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578 ("*State Farm*"), ¶20 ("A sale/leaseback inherently involves an overall contractual relationship between the parties that differs from the model of an unrelated seller negotiating with an unrelated buyer. *** This reciprocal interaction is in itself atypical of the kind of seller-to-buyer transaction that is understood to fix market value for tax purposes, and because of that atypicality, the ordinary presumption in favor of using the sale price under *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979 ***, does not apply.").

Having found that the September 2016 sale is not reliable evidence of value, we turn to the appraisal evidence submitted by the parties. This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In a case where multiple qualifying appraisals have been presented by the parties, the court has again held that the case law "makes clear" that the BTA is statutorily required to weigh the evidence and assess credibility of the appraisals, and "has discretion to depart from any particular appraisal opinion of value and independently determine a value based on whatever evidence in the record the BTA finds to be most probative." *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4286, ¶¶10-11. Additionally, although the VSI appraisal does not opine value as of the tax lien

date and the appraiser was not present to testify, its contents may be considered to the extent that we find it nevertheless provides probative evidence of value. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485.

In this case, the record contains appraisal reports from three appraisers, all of which have obtained the MAI designation. The methodology of their appraisals varies, however, based on each appraiser's treatment of the restrictions in place on the subject property due to its participation in the LIHTC program. Miller utilized rental rates from other restricted properties, while Sprout relied exclusively on market rents from unrestricted properties. VSI relied on both market rents from unrestricted properties for part of its analysis and the maximally-allowable rents pursuant to HUD restrictions, albeit at rates higher than were permitted at the subject property on the tax lien date. In order to determine which approach best reflects the value of the subject property for purposes of ad valorem taxation, a review of relevant Supreme Court case law proves to be valuable.

In *Canton Towers, Ltd. v. Stark Cty. Bd. of Revision*, 3 Ohio St. 3d 4 (1983), the court considered the value of a property that received "controlled contract rent" that exceeded "economic rent" pursuant to a Housing Assistance Program ("HAP") agreement with the Federal Housing Administration ("FHA") and benefitted from a favorable mortgage rate insured by the FHA and HUD. The court affirmed this board's rejection of the cost approach to value because the record showed a high-rise apartment complex like the subject property with comparable rents would not have been built in the location without the federal financing and subsidy. Id. at 6. The court further held that current market rents and conventional financing rates should be used to establish the appropriate capitalization rate rather than those received by the subject property because the artificially-inflated contract rent was not truly reflective of true value in money. Id. at 7. The court reiterated this holding in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16, syllabus (1988): "1. For real property tax purposes, the fee simple estate is to be valued as if it were unencumbered. (*Wynwood Apartments, Inc. v. Bd of Revision* [1979], 59 Ohio St.2d 34, ***, approved and followed.) 2. An apartment property built and operated under the auspices of the Department of Housing and Urban Development is to be valued, for real property tax purposes, with due regard for market rent and current returns on mortgages and equities."

Following *Alliance Towers*, supra, in all subsidized housing cases, the court applied the holding that Section 8 properties should be valued "in accordance with methods that disregarded the affirmative value of the subsidies conferred by the federal government." *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762, ¶28, citing *Oberlin Manor, Ltd. v. Lorain Cty. Bd. of Revision*, 45 Ohio St.3d 56, 57 (1989); *Sunset Square, Ltd. v. Miami Cty. Bd. of Revision*, 50 Ohio St.3d 42, 44 (1990); *Delhi Estates, Ltd. v. Hamilton Cty. Bd. of Revision*, 68 Ohio St.3d 192, 194 (1994); *Loveland Pines v. Hamilton Cty. Bd. of Revision*, 66 Ohio St.3d 387, 388-389 (1993). In *Woda*, the court held that the LIHTC restrictions qualify as "police power" restrictions for the general welfare of the public, notwithstanding that they are triggered by the developer's decision to seek the benefit of the tax credits. Id. at ¶24. The court thereinafter concluded that "in spite of the sweeping language of *Alliance Towers*, the plain import of the decision lies in preventing the *affirmative benefit of government subsidies* from inflating the value of the property for tax purposes. *** But that does not prevent the tax assessor from considering the effect of concomitant use restrictions imposed under I.R.C. 42 – restrictions that the statute requires to be recorded in the chain of title." (Emphasis sic.) Id. at ¶29. The court then held that it was in error for this board to hold that the effect of I.R.C. 42 (LIHTC) restrictions must be disregarded and revert to a cost-based valuation, which improperly reflects the affirmative benefit of tax credits. Id. at ¶30. Notably, in *Woda*, the court's holding was in response to this board's rejection of an appraiser's highest-and-best-use determination that a scattered-site LIHTC development was as a single economic unit. The court commented that "whether to use economic rent or contract rent in valuing an apartment building has typically constituted part of the BTA's fact-finding to which the court has deferred." Id. at ¶22, citing *Wynwood Apts.*, supra.

Following the decision in *Woda*, this board adopted an approach that accepted an appraiser's reliance solelyon the income capitalization approach, utilizing contract rent rather than a market rent when appraising a LIHTC property based on our interpretation of the court's holding. See, e.g., *West Lafayette Townhomes, L.P. v. Coshocton Cty. Bd. of Revision* (Nov. 8, 2011), BTA Nos. 2008-Q-953, 2010-Q-1237, unreported; *Pershing House Ltd. v. Fairfield Cty. Bd. of Revision* (May 8, 2012), BTA No. 2009-K-1134, unreported. The court subsequently explained that its holding in *Woda* that the restriction to low-income housing use had to be taken

into account "adheres to the rule for using a market-rent income approach when valuing government-subsidized residential properties." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ¶22 ("*Network Restorations III*"). The court later clarified that a market-rent approach is necessary when federal subsidies elevate rents above the general rental market, but an appraiser is not precluded from using contract rents to value a property where contract rents do not exceed those generally available in the market. *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2. Thus, the court has clarified, the caselaw has established three general principles regarding the proper valuation methodology for low-income housing: "First, 'in applying the income approach, market rents and expenses, as opposed to the actual rents of the properties at issue, are used.' [*Network Restorations III*,] at ¶ 16. Second, in using 'an income approach, government subsidies should not be taken into account in a way that would increase the value of the property.' *Id*. at ¶ 17. Third, a cost approach to valuation is disfavored. *Id*. at ¶ 18." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254, ¶17 ("*Network Restorations I*"). Finally, the appropriate subset of "market" rents to consider may include LIHTC market rent when that is the market place in which the property competes. Id.

In short, the case law is clear that when determining the value of a property that receives government subsidies, those subsidies should be disregarded to the extent that they provide an affirmative value above "market." The case law also establishes that restrictions imposed pursuant to the government's police powers, as is the case with the LIHTC property in the present appeal, must be considered. See, also, R.C. 5713.03 ("The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered *but subject to any effects from the exercise of police powers or from other governmental actions* ***." (Emphasis added.))

As we apply these principles to the present appeal, we must first determine in which market place the subject property competes in order to apply the appropriate "market rents." Miller contends that the subject property competes with other low-income properties and utilizes income based on a restricted-rent market in other areas throughout Franklin County. In doing so, Miller attempted to remove the affirmative value of all subsidies by utilizing only rents for those units that do not receive any additional subsidy, whether by project (such as HAP agreement) or individual-based (such as a portable voucher). Sprout, on the other hand, relied on the subject's physical size and location and considered other apartment communities in close proximity to the subject but that were not subject to LIHTC restrictions. The VSI appraisal utilized both potential contract rents for a property located in Franklin County restricted based on 60% AMI and unrestricted market rents, similar to Sprout.

We find flaws in the market analysis for all three appraisals, but because the auditor's values are based on the cost approach, we cannot simply reverse the BOR's decision and revert to the initially-assessed values. *Woda*, supra, at ¶12. Instead, after we weigh all the evidence, we must independently determine value based on the best evidence available. We first reject Sprout's appraisal because he relies solely on the directive to utilize "market rents" and disregards the mandate in *Woda* that restrictions must be taken into consideration. Similarly, VSI either ignores the restriction altogether or understates its potential impact because it utilizes a 60% AMI rather than the 45% and 50% in place at the subject on the tax lien date. While we reject the conclusions of value in these appraisals, we find the reports and Sprout's testimony informative, not only to establish an appropriate market rent and overall opinion of value if the property were operating in the unrestricted market, but also in particular with respect to competition and levels of risk. Miller's appraisal utilizes market data for restricted properties for much of his analysis, including the increased expenses associated with operating a LIHTC property, but we find that he narrowed the rental market too drastically to establish market rates and overstated the risk associated with operating this type of property. Consequently, we rely on Miller's data as a starting point but make two necessary adjustments.

Miller's approach presumes that a LIHTC property must be valued using only restricted rents and that no subsidy can be considered. Miller accomplishes this by removing all units receiving rents that include portable tenant-based subsidies. In *Network Restorations I*, the court discussed an appraisal from Miller in which he utilized a similar approach, which this board rejected without fully weighing the evidence as to whether the project's subsidies resulted in rents that exceeded the market in which it competed. The court

commented, "[t]o be sure, the reference to market rents in [*Network Restorations III* and *Notestine Manor*] is best understood as describing rents that are both unrestricted and unsubsidized. But the logic of those decisions can be extended to permit consideration of an appropriate *subset* of market rents, here, the appropriate subset is rents from the LIHTC market. As Miller stated in Memorandum D, '[m]arket rent is derived from the market place a property competes within.' Thus, in developing a market rent for a LIHTC property, Miller explained, it is permissible to look to rents from other LIHTC properties because these types of properties compete against each other." (Emphasis sic.) *Network Restorations I*, supra, at ¶20.

In this case, the subject property is again a LIHTC property and competes against other low-income housing for tenants. As such, we agree with Miller that the subset of market rents is properly narrowed to LIHTC rents. We question, however, Miller's exclusion of the portable vouchers from his analysis. Miller testified that a landlord has a published rent and a Section 8 voucher does not allow the landlord to exceed that published rent, though it may allow the landlord to charge at the higher end of the range. H.R. at 51-52. Instead, the primary effect of the voucher is that "it allows them to take tenants they might not otherwise have been able to take because of affordable issues." Id. at 52. In this case, the subject property does not have a project-based subsidy that artificially sets rents, but rather rents are set by its competition within the market place. A review of his competitive properties survey shows that Section 8 vouchers are accepted by many market participants and tenants receiving the portable subsidies may account for up to half of the occupied units. As such, we question the need to remove them from the competitive market analysis in this case. By doing so, it appears that Miller has removed a significant portion of the market from his rental rate analysis, though the evidence (particularly the Sprout and VSI appraisals) shows that these subsidies do not elevate the property above the local unrestricted market.

We also question the comparable rental rates chosen by Miller based on the market data presented. While we acknowledge that the rent comparables have various levels of AMI restrictions, we find that the market rent to which Miller concluded for several units was improperly set within the range, particularly considering the favorable location of the subject property in the Dublin City School District. For example, when Miller testified about his disregard of a nearby low-income housing project in his market analysis, he explained that the subject property is primarily occupied by families and operates in a different market than the other property, which is used as seniors housing. The record, especially Sprout's report and testimony, demonstrates that the subject's location within the Dublin City School district makes it more desirable for families seeking housing, which would have a positive influence on rental rates within the low-income submarket. Despite this, looking to his apartment survey ranges, Miller utilized rents that were below the averages for nearly all unit types. While we acknowledge that the condition of the subject units played a role, only one of the comparable properties had undergone a recent renovation (during 2016), and that property's rents were at the highest end of the range for only the larger two-bedroom units. We find it unlikely that the conditions of the remaining properties, whose ages or most recent renovations range from 1995 (the same year the subject was built) to 2006, were so superior that they would support the subject's position in the bottom portion of the range considering its favorable location. Notably, the rents utilized by Miller are below those set forth as the average actual rents at the subject property in the VSI appraisal (which has an effective date roughly one month before the tax lien date), and Miller's EGI at $1,266,088 fell below the subject's actual EGI for 2014 ($1,268,854), 2015 ($1,291,110), and 2016 ($1,287,679).

Finally, we find that the capitalization rate utilized by Miller inaccurately reflects the risk of the subjectproperty. Miller stated on page 14 of his report that "[b]ecause LIHTC properties compete for a smaller segment of the 'universe' of households, they are somewhat riskier than the conventional properties they compete against, all things being equal." This statement, however, is contrasted by his testimony during this board's hearing that "there is an undersupply of affordable housing," H.R. at 61, and the data in his report that shows physical vacancy rates range from 0% with a substantial waitlist to 5% for a property with only 40% of its total units restricted by LIHTC (the remaining 60% are unrestricted market rate units). Miller's capitalization rate is based on data from the conventional market with a range of 7.2% to 8.2%, and he settled at 7.5%. Sprout's appraisal, which also considered sales of the conventional apartments that he utilized in his sales comparison analysis, included a range from 4.75% to 7% for local apartment sales, plus an additional list of other apartment projects, and he utilized a rate of 7%. Although Miller briefly described the data he reviewed

in his report, he did not provide the details for this board to review any specific information about the sales, such as the number of units that transferred and how many total sales were included in his range. In this aspect, we find that Sprout's capitalization rate analysis is better supported. Furthermore, because the property operates in a market that has low vacancy rates and serves a population that has an undersupply of housing, we find that Sprout's capitalization rate better reflects that which would apply to the subject property.

Based upon the preceding discussion, we find that Miller's appraisal should be adjusted in two ways. First, we find that the subject's actual 2015 EGI should be used in place of Miller's estimated EGI because it was the last year full before the subject began undergoing renovations, which presumably would have an impact on its ability to collect rents for at least some portion of the units. We acknowledge that the court has held that market-based rents are most appropriate, but the court has also made it clear that it is within this board's discretion as to whether contract rent is more appropriate, particularly where there is no evidence that the subject's rent subsidies elevate rents above "the general rental market." See, e.g., *Notestine Manor,* supra, at ¶24. In this case, we find that such an approach is necessary because Miller's analysis has excluded a portion of the market - those tenants that receive portable section 8 vouchers. Based on this and an adjustment to the capitalization rate, we find that the value of the subject property should be calculated as follows:

$1,291,110 (EGI)

– $851,965 (Miller's estimated expenses)

= $439,145 (NOI)

÷ 10.19% (7% capitalization rate +3.19% tax additur)

= $4,309,568 (total value)

– $18,378 (Miller's FF&E conclusion)

= $4,291,190 (total value attributable to the subject real estate)

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$4,291,190

TAXABLE VALUE

$1,501,920

OHIO BOARD OF TAX APPEALS

PETRICK BUILDERS LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1868

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK BUILDERS LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that

the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PETRICK BUILDERS LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1867 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK BUILDERS LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that

the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PETRICK INVESTMENTS 2 LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1866

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK INVESTMENTS 2 LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that

the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CLYDE H PITTS JR., (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1889 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLYDE H PITTS JR.
Represented by:
CLYDE PITTS
778 NORTH HILL LANE
2673 BANNING RD.
CINCINNATI, OH 45224

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Friday, February 1, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of

the appeal was filed with the BOR thirty-seven days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PETRICK BUILDERS LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1860

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK BUILDERS LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

JEREMY T. & JULIANA E. MELBYE
17130 GOLDEN STAR DR.
STRONGSVILLE, OH 44136

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision and was filed late with this board. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions,

and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, we lack jurisdiction to reach the county appellees' motion to remand this matter based on their argument that the complainant lacked standing to file the underlying complaint.

Based upon the foregoing, this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

M & L SUNSET PROPERTIES, LLC, (et. al.),

Appellant(s),

vs.

LAKE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1594

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - M & L SUNSET PROPERTIES, LLC
Represented by:
LAURA BOLLAS
OWNER
602 SUNSET DR.
MADISON, OH 44057

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Lake County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On September 25, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on September 19, 2018. Appellant did not include a copy of a BOR decision. The county appellees argue that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ROBERT NEVULIS, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1379 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT NEVULIS
8255 LANCASTER DRIVE
MENTOR, OH 44060

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Lake County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On September 17, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on September 12, 2018. Appellant did not include a copy of a BOR decision. The county appellees argue that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter

must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

FAE PERRY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1293 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FAE PERRY
2533 CHARNEY ROAD
UNIVERSITY HTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JACK PETRICK, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1872

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this

board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JACK PETRICK, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1862

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that the notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this

board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MS & AS PROPERTIES LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1325 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MS & AS PROPERTIES LLC
Represented by:
DAVID KOENIG
9810 EAST WASHINGTON STREET
CHAGRIN FALLS, OH 44023

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss and remand with instructions to dismiss the underlying complaint. The county asserts that the complaint was filed by a non-attorney and such filing constituted the unauthorized practice of law. Appellant has not responded to the motion. We decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, and the motion.

The underlying complaint against the valuation of parcel number 022-14-109 for tax year 2017 was filed by David Koenig as agent for property owner MS & AS Properties, LLC. Mr. Koenig's relationship to the property is unclear. No one appeared on behalf of the owner at the board of revision's ("BOR") hearing on the complaint, and the BOR ultimately issued a decision finding no change in value was warranted. Mr. Koenig appealed the decision to this board on behalf of the owner; again, his relationship to the property was not specified.

The county argues that Mr. Koenig was not authorized to file the underlying complaint on behalf of the owner. R.C. 5715.19(A) provides the following individuals may file a complaint against the valuation of real property:

> "Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who

> holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.01 of the Revised Code, a general or residential real estate appraiser licensed under Chapter 4735. of the Revised Code, who is retained by such person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; ***."

A non-attorney individual who is not one of those enumerated in the statute as authorized to file on behalf of another engages in the unauthorized practice of law by filing a complaint on behalf of another. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479, 483 (1997). Such complaint also fails to invoke the jurisdiction of the board of revision. *Id.* Although Mr. Koenig's relationship to the property is not clear, it does not appear that he is an attorney nor that his relationship to the property owner is any of those identified by R.C. 5715.19(A). We therefore find he is not authorized to file on behalf of the owner. *See Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244. *See also NASCAR Holdings, Inc. v. Testa*, 152 Ohio St.3d 405, 2017-Ohio-9118.

Based upon the foregoing, we find that the underlying complaint failed to properly invoke the jurisdiction of the BOR. The county appellees' motion is therefore well taken. It is the order of this board that this matter be remanded to the Cuyahoga County Board of Revision with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

OPS EXCELLENCE LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-2046

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OPS EXCELLENCE LLC
Represented by:
BHUSHAN EKBOTE
535 S. CURSON AVE
APT 2E
LOS ANGELES, CA 90036

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to

comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DOCTOR RON AND CHARLOTTE F, (et. al.),

Appellant(s),

vs.

LICKING COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1799

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RON AND CHARLOTTE DOCTOR
Represented by:
RON DOCTOR
OWNER
1870 HARRISON RD
JONHSTOWN, OH 43031

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
DANIEL BENOIT
ASSISTANT PROSECUTOR
LICKING COUNTY PROSECUTOR'S OFFICE
20 SOUTH SECOND STREET
NEWARK, OH 43055

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owners Ron and Charlotte Doctor appeal from a decision of the Licking County Board of Revision ("BOR") valuing subject parcel 035-106428-00.002 at $252,800 for tax year 2017. Appellants argue the subject should be valued at $224,300. We now consider the matter on the notice of appeal and the transcript certified by the auditor ("S.T.").

The auditor valued the subject at $269,300 for tax year 2017, and appellants filed a decrease complaint with an opinion of value of $224,300. On the complaint, appellants wrote that "extensive repairs are need[ed] to update value to property in line with fair market value." Appellants' complaint states there were no recent sales, and the parcel card has no sales data. At the BOR hearing, appellants relied on several repair or replacement estimates from a variety of vendors. Appellants offered those estimates to show repair or replacement costs for windows, asphalt, and millwork. Mr. Doctor testified, but no vendor testified as to the estimates. Appellants also offered some photographs as well as a summary document titled "direct impact on real estate value." That document alleges approximately $106,800 in needed repairs. Mr. Doctor also testified about how the auditor had valued nearby parcels. Appellants did not offer an appraisal. We note a significant amount of the testimony and evidence offered pertained to the tax rate and reduction factors, not value.

The BOR ultimately granted a partial decrease in value to $252,800. The BOR's summary document states

the reason for the adjustment was "deferred maintenance condition considered." The BOR's speaking member orally stated the BOR was accounting for needed repairs, but the BOR never specified which repairs they considered or how they ascertained the new value. Appellants appealed to this board. This board scheduled a hearing. Appellants waived their appearance, and no BOR representative appeared. No party filed written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

A recent, arm's-length sale is the best evidence of value. *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). However, there is no evidence in the record about a recent sale or any sale. The parcel card is devoid of such information, and no party has submitted evidence of any sales. In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). However, appellants did not obtain an appraisal. They instead offered documents and testimony about needed repairs and argued the auditor had valued nearby parcels differently.

We are unable to find an adjustment is warranted based solely on the subject's negative characteristics. Here, the impact those characteristics could have on value is not self-evident. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7.

We are likewise unable to find appellants have met their burden by arguing the county auditor has valued nearby parcels differently. Appellants bear the burden of proving the auditor overvalued the subject. The Ohio Supreme Court has been clear, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). We do not find an adjustment is warranted on that basis. Accordingly, we find appellants have not carried their burden.

We are mindful of our duty to review the BOR's reduction independently. *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"). Here, we find the evidence does not support the BOR's reduction nor can we replicate the BOR's value. The BOR reduced the value from $269,300 to $252,800 to account for "repairs." However, we are unable to determine why the BOR determined a reduction of $16,500 was appropriate. Indeed, appellants alleged over $100,000 of repairs were needed.

We are also unable to replicate the $16,500 figure using any combination of expenses offered by appellants. While the skylight replacement cost plus the garage door replacement cost calculation comes close, we cannot determine why the BOR would have felt those expenses were distinct from the window replacement costs or the driveway costs. No party appeared at this board's hearing or filed written argument to explain how or why the BOR determined its value. Accordingly, we reverse the BOR's value because it is unsupported by the evidence, and we cannot replicate it. For tax year 2017, we order the subject valued in accordance with the following values, initially determined by the auditor:

PARCEL 035-106428-00.002

TRUE VALUE

$269,300

TAXABLE VALUE

$94,260

OHIO BOARD OF TAX APPEALS

DONALD E. MCCLAIN JR., (et. al.),

Appellant(s),

vs.

LICKING COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-934

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DONALD E. MCCLAIN JR.
229 JEFFERSON ST.
NEWARK, OH 43055

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
PAULINE O'NEILL
ASSISTANT PROSECUTING ATTORNEY
LICKING COUNTY
20 SOUTH SECOND STREET
P.O. BOX 830
NEWARK, OH 43058-0830

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals to this board from a decision of the Licking County Board of Revision ("BOR"), which determined the value of parcel number 054-226470-00.000 for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of the hearing before this board, at which only appellant appeared.

The auditor initially valued the subject property at $43,600 for tax year 2017. Property owner Donald E. McClain, Jr. filed a complaint against the valuation, seeking a decrease to $20,000, based on a prior reduction, the condition of the home, and comparable sales. At the BOR hearing, Mr. McClain testified that the property was reduced in value to $20,000 several years ago, and that the home continues to be in poor condition. He noted the roof needs to be repaired. Mr. McClain also indicated the home next door, which is in better condition, sold at auction for $18,000. After considering the evidence presented, the BOR reduced the value of the property to $30,000. The auditor's property record card reflects that the interior and exterior of the property was inspected by a representative of the auditor's office, who indicated the condition of the property was poor. The record card reflects that the condition of the property was changed from fair to poor, and the grade reduced from 100 to 90.

Appellant thereafter appealed to this board, again requesting a reduction in value to $20,000. At this board's hearing, Mr. McClain testified about the poor condition of the property and provided photos to demonstrate its defects. He indicated that the property needs between $25,000 and $30,000 in repairs to be worth the value placed on the property by the auditor. H.R. at 11.

The burden is on the owner "to demonstrate that the value [he] advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

Appellant primarily relies on the poor condition of the property. As the Supreme Court stated in *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, "[a]s a general matter, '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.' *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 288, *** (1996)." (Parallel citation omitted.) Id. at ¶27. As this board has repeatedly stated, a party must do more than simply demonstrate the existence of negative factors; it must also demonstrate the impact such factors have on the property's value. In the absence of an appraisal quantifying the effect of any negative factors on the value of the property, we find appellant's evidence insufficient to support a reduction in value.

We further find appellant's reliance on other sales to be insufficient. He points specifically to the sale of his aunt's home, located nearby, in an auction sale for $18,000. The date of the sale is unclear, as are its circumstances. Notably, auction sales are presumed not to be at arm's-length, in the absence of affirmative evidence that the sale was voluntary and conducted at arm's-length. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. Without further information about the sale, we do not find it probative in our determination of value.

Based upon the foregoing, we find appellant has failed to provide sufficient evidence to support a reduction below the BOR's valuation. We must, therefore, turn to the BOR's decision to reduce value. We accord no presumption of validity to the BOR's decision, and, instead, independently weigh the evidence in the record. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823. The auditor's property record card reflects that the reduction from the auditor's initial value was based on an interior inspection of the property by a member of the auditor's staff, which resulted in changes to the property's condition and grade. We find such evidence supports the BOR's decision to reduce value to $30,000.

It is therefore the order of this board that the true and taxable values of the subject real property, as of January 1, 2017, were as follows:

TRUE VALUE

$30,000

TAXABLE VALUE

$10,500

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-248, 2018-249
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

JRM RENTALS III, LLC
215 RIVERS EDGE WAY
GAHANNA, OH 43230

Entered Tuesday, February 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The board of education ("BOE") appeals decisions of the board of revision ("BOR"), which determined the values of the subject properties, parcels 110-003324-00, 600-153499-00, 600-153533-00, and 600-153605-00, for tax year 2017. We proceed to consider these matters based upon the notices of appeal, the statutory transcripts filed pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject properties, single-family rental properties, were initially assessed at $147,000 for parcel 110-003324-00, $99,500 for parcel 600-153499-00, $108,000 for parcel 600-153533-00, and $96,200 for parcel 600-153605-00. The property owner filed complaints, which requested that the subject properties' values be reduced based upon comparable sales data. The BOE filed countercomplaints, which objected to the requests.

[3] The BOR held a hearing on the matters, at which time representatives of the property owner and the BOE appeared to submit argument and/or evidence into the record. (It should be noted that the BOR held a

consolidated hearing, which included the subject properties and other properties that are not the subject of these appeals.) John Marette, a member of the property owner, testified as to the circumstances of his purchases of the subject properties, and the conditions and rental income derived from each of the subject properties. He also argued that comparable sales data indicated that the subject properties had been overvalued for tax year 2017. The BOE cross-examined Marette. At the BOR decision hearing, the BOR members noted their decision to reduce the subject properties' values based upon the submitted comparable sales, the rental income derived from the subject properties, and Marette's testimony. The BOE subsequently issued decisions that reduced the subject properties' values and these appeals ensued.

[4] While these matters were pending, this board sua sponte consolidated these matters given the commonalities of the two appeals.

[5] At this board's merit hearing, both parties appeared to supplement the record with additional argument and/or evidence. In its presentation, the BOE argued that the BOR's decisions were unsupported by the records given that the property owner's comparable sales were not adjusted to account for differences with the subject property, and that there were no recent sales of the parcels. Marette reiterated portions of his prior testimony. He was examined and cross-examined by the board's attorney examiner and BOE, respectively.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[7] We note that parcel 600-153605-00 transferred for $58,000 in November 2015. Such sale is noted on the property record card and was the subject of discussion at the hearings before the BOR and before this board. Though the BOE argued that such sale was too remote to the tax lien date to be indicative of this parcel's value, we disagree. In *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26, the court held that a "a sale that occurred more than 24 months before the lien date and that is reflected in the property record maintained by the county auditor or fiscal officer should not be presumed to be recent when a different value has been determined for that lien date as part of the six-year reappraisal." Here, although it could be presumed that the county auditor rejected such sale when he conducted the six-year reappraisal in tax year 2017, by determining a different value for parcel 600-153605-00, the November 2015 sale occurred approximately fourteen months before the tax lien date. We find, therefore, that *Akron* does not render the November 2015 sale too remote from the tax lien date of January 1, 2017. To the extent that the BOE argued that this sale was not an arm's-length transfer because the subject property was not offered on the open market, we have repeatedly rejected such argument. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported. Accord *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. As such, we find the $58,000 sale of November 2015 to be the best indication of value for parcel 600-153605-00.

[8] As to the remaining three parcels, 110-003324-00, 600-153499-00, and 600-153533-00, we conclude that the property owner failed to provide competent, credible, and probative evidence of value. As noted above, the property owner primarily relied upon unadjusted comparable sales data. We have repeatedly held that information of this type is an insufficient basis to determine real property value because it fails to adequately consider and account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. Here, there was no attempt to adjust the properties to account for any differences among the properties. See, generally, The Appraisal of Real Estate (13th Ed.2008). See also *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of

her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."); *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative). Furthermore, Marette acknowledged that he lacked firsthand knowledge of the unadjusted comparable sales, and as such, his testimony about them amounts to unreliable hearsay. *Worthington City Schools Bd. of Edn. v. Franklin County Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶19 ("the owner qualifies primarily as a fact witness giving information about his or her own property; usually the owner may not testify about comparable properties, because that testimony would be hearsay. See *Raymond v. Raymond*, 10th Dist. Franklin No. 11AP-363, 2011-Ohio-6173, ¶¶19-20.").

[9] We now turn to the propriety of the BOR's decisions to reduce the value of parcels 110-003324-00, 600-153499-00, and 600-153533-00 based upon the unadjusted comparable sales and testimony submitted by Marette. For the reasons stated above, the unadjusted comparable sales data was an improper basis to reduce the value of these parcels. Though "an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property," *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987), "the owner qualifies primarily as a fact witness giving information about his or her own property * * *[,]" *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶ 18. Nevertheless, in order for such opinion to be considered probative, it must be supported by tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co*., 65 Ohio St.3d 621 (1992). In this matter, Marette's testimony was uncorroborated by any competent, credible, and probative evidence. Furthermore, it is unclear how the BOR arrived at its specific value decisions. For example, the BOR valued parcel 110-003324-00 at $116,500; however, there is no explanation or evidence that would allow this board to determine how the BOR arrived at that value instead of some other value, say $116,000. As a consequence, we are constrained to determine that the BOR's decisions are unsupported.

[10] In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that parcel 600-153605-00 should be valued consistent with the $58,000 price at which it transferred in November 2015. However, as to the remaining parcels, 110-003324-00, 600-153499-00, and 600-153533-00, we find that the property owner failed to provide competent, credible, and probative evidence of their values. Because we are unable to replicate the BOR's decisions, or to fully determine the basis for its decisions, we must conclude that the BOR's decisions are unsupported. As such, we are constrained to reinstate the initially assessed values for parcels 110-003324-00, 600-153499-00, and 600-153533-00. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 35. Here, the BTA assigned a value that *** could be achieved only through artifice.") (Parallel citations omitted.)

[11] It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER 110-003324-00

TRUE VALUE: $147,000

TAXABLE VALUE: $51,450

PARCEL NUMBER 600-153499-

00 TRUE VALUE: $99,500

TAXABLE VALUE: $34,830

PARCEL NUMBER 600-153533-

00 TRUE VALUE: $108,000

TAXABLE VALUE: $37,800

PARCEL NUMBER 600-153605-

00 TRUE VALUE: $58,000

TAXABLE VALUE: $20,300

OHIO BOARD OF TAX APPEALS

WPE LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-2043 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WPE LLC
Represented by:
JAMES K. ROOSA
JAMES K. ROOSA CO., LPA
3723 PEARL RD. SUITE 200
CLEVELAND, OH 44109-2765

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL CITY SCHOOL BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, February 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision and was filed late with this board. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to

comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Although it appears the notice of appeal was timely filed with this board, the record does not demonstrate that appellant filed notice of the appeal with the BOR within the statutory thirty-day period. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MICHAEL ARAU, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1377

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL ARAU
431 LAMBOURNE AVE.
WORTHINGTON, OH 43085

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Wednesday, February 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission of the real property tax late payment penalty with the county treasurer and thus the board of revision ("BOR") has not issued a final decision from which appellant could appeal to this board. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On September 17, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued on the application referenced by appellant in his notice of appeal.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter

must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DAVID WILLIAM GRIFFITH, (et. al.),

Appellant(s),

vs.

LICKING COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-2265

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAVID WILLIAM GRIFFITH
Represented by:
DAVID GRIFFITH
4095 HANKINSON RD.
GRANVILLE, OH 43023

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
PAULINE O'NEILL
ASSISTANT PROSECUTING ATTORNEY
LICKING COUNTY
20 SOUTH SECOND STREET
P.O. BOX 830
NEWARK, OH 43058-0830

Entered Thursday, February 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss for lack of jurisdiction, asserting appellant failed to timely file notice of the appeal with this board.

The record before us indicates that two decision letters were issued by the Licking County Board of Revision ("BOR"): one dated August 22, 2018, and one dated September 26, 2018. The record further reflects that the BOR received notice of an appeal of its decision by appellant on October 26, 2018; however, notice of the appeal was not filed with this board until December 21, 2018. R.C. 5717.01 requires that an appeal from a decision of a board of revision be filed with this board, and with the BOR, within thirty days of the mailing of the BOR's decision letter. The county appellees argue that, even going from the second letter (dated September 26), this appeal is untimely. In response, appellant argues that he believed setting up an account with this board's electronic filing system constituted the filing of an appeal. When he became aware that this board had no record of an appeal, he immediately filed one.

R.C. 5717.01 requires that an appeal "may be taken to the board of tax appeals *within thirty days after notice of the decision* of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946). Strict compliance with R.C. 5717.01 is essential to

vest jurisdiction with this board. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely manner.").

Based upon the record, we find appellant failed to timely file the appeal with this board. While we are sympathetic to appellant's misunderstanding, this board has no authority to act when the appeal statute, i.e., R.C. 5717.01, is not adhered to. The county appellees' motion is well taken, and this matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

2371 CLYBOURN, LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1674 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 2371 CLYBOURN, LLC
Represented by:
2371 CLYBOURN, LLC
4816 BRECKSVILLE RD
BRECKSVILLE, OH 44286

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, February 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move this board to dismiss this matter for lack of jurisdiction, as the Franklin County Board of Revision ("BOR") has not yet rendered a decision from which appellant can appeal to this board under R.C. 5717.01. Appellant has not responded to the motion.

R.C. 5703.02 grants this board the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the board of tax appeals within thirty days *after notice of the decision* of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

The record before us, including the affidavit of the clerk of the BOR, indicates that no decision has been rendered from which appellant could appeal to this board. The county appellees' motion is therefore well taken, and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

REBECCA M. DOSS, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1558

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REBECCA M. DOSS
OWNER
P.O. BOX 453
HILLIARD, OH 43026

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, February 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move this board to dismiss this matter for lack of jurisdiction, as the Franklin County Board of Revision ("BOR") has not yet rendered a decision from which appellant can appeal to this board under R.C. 5717.01. Appellant has not responded to the motion.

R.C. 5703.02 grants this board the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the board of tax appeals within thirty days *after notice of the decision* of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

The record before us, including the affidavit of the clerk of the BOR, indicates that no decision has been rendered from which appellant could appeal to this board. The county appellees' motion is therefore well taken, and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

ROCHELLE L. BOSSCAWEN, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1021 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROCHELLE L. BOSSCAWEN
Represented by:
ROCHELLE L. BOSSCAWEN (WILLIS)
OWNER
612 MAPLEWOOD AVENUE
COLUMBUS, OH 43213

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, February 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move this board to dismiss this matter for lack of jurisdiction, as the Franklin County Board of Revision ("BOR") has not yet rendered a decision from which appellant can appeal to this board under R.C. 5717.01. Appellant has not responded to the motion.

R.C. 5703.02 grants this board the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the board of tax appeals within thirty days *after notice of the decision* of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

The record before us, including the affidavit of the clerk of the BOR, indicates that no decision has been rendered from which appellant could appeal to this board. The county appellees' motion is therefore well taken, and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

LEONARD SMITH, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1299

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LEONARD SMITH
Represented by:
LEONARD SMITIH
OWNER
1810 HEWITT AVE.
CINCINNATI, OH 45207

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, February 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the

existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

FOSTORIA CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1187
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
WOOD COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - FOSTORIA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JENNIFER STIFF TOMLIN
SCOTT SCRIVEN LLP
250 EAST BROAD STREET, SUITE 900
COLUMBUS, OH 43215

For the Appellee(s) - WOOD COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

B&D HOLDINGS LTD
Represented by:
CHRISTOPHER M. FRASOR
SPITLER HUFFMAN, LLP
131 EAST COURT STREET
BOWLING GREEN, OH 43402

Entered Tuesday, February 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels O55-312-360201007000, O55-312-360201007001, O55-312-360201008000, and O55-312-360201008001, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The auditor initially assessed the subject property, a commercial property, a combined value of $755,000. The property owner filed a complaint, which requested that the subject property be revalued at $350,000 purportedly based upon the price at which it transferred in August 2017. The BOE filed a countercomplaint, which objected to the request.

At the BOR hearing, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. In its presentation, though a member of the property owner, Donald K. Bowling, was present to testify, counsel for the property owner provided his understanding of facts and circumstances surrounding the property owner's $350,000 purchase of the subject property from FSTRE, LLC in August 2017. The property owner submitted sale documents, i.e., purchase agreement, settlement statement, and conveyance fee statement to confirm the details of the sale. Based upon its presentation, the property owner requested that the subject property be revalued at $350,000. In its presentation, the BOE cross-examined Bowling about details of the sale and about the use of, and income derived from, the subject property. The BOR voted to accept the sale as the best indication of the subject property's value and subsequently issued a written decision to that effect. This appeal ensued. None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. Instead, the BOE and property owner submitted written argument to fully assert their respective positions.

Before we address the merits of this appeal, we must first dispose of a preliminary issue. By way of its notice of appeal, the BOE requested that this matter be resolved through this board's small claims docket. As an initial matter, the BOE is not a "taxpayer" for purposes of opting into the board's small claims process and cannot avail itself of such process. See R.C. 5703.021. "'[A] party that is a taxpayer' under R.C. 5703.021(D) means one whose standing as a party to the case before the BTA is predicated on the ownership of taxable property in the county under R.C. 5715.19(A)(1). Because the school board's status as a party to these proceedings depends solely upon its having filed a countercomplaint before the BOR in its capacity as an affected board of education pursuant to R.C. 5715.19(B), the school board does not come within the intended meaning of 'taxpayer' for purposes of R.C. 5703.021."*Megaland GP, L.L.C. v. Franklin Cty. Bd. of Revision,* 145 Ohio St.3d 84, 2015-Ohio-4918, at ¶22

Furthermore, this appeal does not qualify for the small claims process. R.C. 5703.021(C)(2) provides that after an appeal is assigned to the small claims docket, the board may reassign the case to the regular docket only with the written consent of all the parties or as authorized under 5703.021(D), which states: "Notwithstanding division (B) of this section, the board shall reassign an appeal initially assigned to the small claims docket to the regular docket *** when the board determines that the appeal does not meet the requirements of division (B) of this section." R.C. 5703.021(B)(1) authorizes appeals to be assigned to the small claims docket if the appeal "[c]ommenced under section 5717.01 of the Revised Code in which the property at issue qualifies for the partial tax exemption described in section 319.302 of the Revised Code." The property subject to the instant appeal is a commercial property and does not meet this standard. Accordingly, this matter does not qualify for the small claims docket and will proceed on the regular docket.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). The affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997); *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415.

We begin our analysis with the subject sale. The property owner submitted sale documents, which created the rebuttable presumption that the $350,000 sale of the subject property in August 2017 was, indeed, the best indication of the subject property's value as of the tax lien date. The burden then shifted to the opponent of the sale, the BOE, to provide evidence to rebut such sale. *Terraza 8*, supra, at ¶¶32, 34. Based upon our review of the record and relevant law, we must conclude that the BOE failed to rebut the subject sale.

The BOE primarily argued that the sale did not occur between parties acting at arm's length because of

their pre-existing landlord-tenant relationship, because the parties did not negotiate on the sale price, and because the subject property was not exposed to the open market. For two main reasons, we reject the BOE's arguments. First, the Supreme Court has previously held that sales between landlords and tenants can be conducted at arm's-length despite such relationship. See, e.g., *N. Royalton City School Dist. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. Second, this board has previously held that "merely because a property is not listed on the open market, or is offered at a 'take it or leave it' selling price, and/or a sale takes place between persons having prior business relations and/or friendships does not, per se, mandate the rejection of a sale." *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported. See, also *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Apr. 28, 2009), BTA No. 2006-H-1622, unreported at 9 ("[T]his board has held that sale offers not made on the open market in the traditional sense, i.e., listed by a realtor, do not necessarily render a sale less than arm's length."). Accord *N. Royalton*, supra.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the BOE failed to submit any evidence to rebut the presumptions accorded to the subject sale. Though the BOE raised a number of issues to reject the subject sale, it failed to come forward with competent, credible, and probative evidence to support its argument that the subject sale was not an arm's-length transaction. "Mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15. Therefore, we affirm the BOR's decision to accept the subject sale as the best indication of value as of the tax lien date.

It is the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER O55-312-360201007000

TRUE VALUE: $27,500

TAXABLE VALUE: $9,630

PARCEL NUMBER O55-312-360201007001

TRUE VALUE: $13,400

TAXABLE VALUE: $4,690

PARCEL NUMBER O55-312-360201008000

TRUE VALUE: $302,500

TAXABLE VALUE: $105,880

PARCEL NUMBER O55-312-360201008001

TRUE VALUE: $6,600

TAXABLE VALUE: $2,310

OHIO BOARD OF TAX APPEALS

JAMES T. KOSKAN, (et. al.),

Appellant(s),

vs.

DEFIANCE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-749

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMES T. KOSKAN
OWNER
559 E. HIGH STREET
DEFIANCE , OH 43512

For the Appellee(s) - DEFIANCE COUNTY BOARD OF REVISION
Represented by:
MORRIS J. MURRAY
PROSECUTING ATTORNEY
DEFIANCE COUNTY
500 COURT ST., STE C
DEFIANCE, OH 43512

Entered Tuesday, February 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals to this board from a decision of the Defiance County Board of Revision ("BOR") determining the value of parcel number B01-3137-0-015-00 for tax year 2017. Although this matter was initially assigned to the board's small claims docket, appellant clarified during the telephonic hearing that such assignment was in error. We therefore proceed to issue a full merit decision, considering the notice of appeal, the statutory transcript certified by the county auditor, and the comments made during this board's telephonic hearing.

The subject property is improved with a single-family residence. The auditor initially valued the property at $248,790 for tax year 2017. The owners filed a complaint against the valuation, seeking a reduction in value to $170,000, based on the values of nearby homes and the sale of the property next to the subject in April 2017 for $195,000. At the BOR hearing, appellant presented a comparison of the subject property's value and nearby properties' values, and argued that the subject property had been unfairly valued. He also indicated the property suffers from defects, including cracks in the foundation, walls, and ceilings. After considering the evidence presented, the BOR determined that no change in value was warranted. The BOR noted that the comparable properties presented by appellant differed from the subject property, e.g., two-story homes compared to the subject one-story home.

Appellant appealed to this board, again requesting a value of between $170,000 and $180,000. During this board's telephonic hearing, appellant largely reiterated the testimony previously provided to the BOR.

As the appellant in this matter, the burden is on the owner "to demonstrate that the value [he] advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. While an owner of property "is, by virtue of such ownership, competent to testify as to the market value of the property," *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987), such "opinion is not controlling." *Johnson v. Clark Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-4390, ¶23. This board must independently evaluate the evidence to determine the true value of the property. Further, as the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision,* 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

Appellant primarily argues that the subject property is valued disproportionately higher than purportedly comparable properties located nearby. At the outset, the fallacy of reliance upon other properties' assessed values must be acknowledged, since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Indeed, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties' in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See also *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979). Moreover, as the BOR members noted during its decision hearing, the comparable properties chosen by appellant as the basis for his requested value for the subject property have different features. For example, the auditor's property records indicate that 601 High Street is a two-story home, and the subject is a one-story home. We do not find appellant's comparison of other properties' assessed values probative of the subject property's value given such dissimilarities.

Appellant also cites the sale of 601 High Street in April 2017 for $195,000 as evidence that the subject property is overvalued. Little information about the circumstances of the sale were provided, e.g., whether the sale was conducted at arm's-length. In addition, one sale does not provide sufficient evidence of the subject's market to allow us to determine whether the value of the subject property should be reduced. As this board noted in *Warner v. Greene Cty. Bd. of Revision* (Mar. 31, 2016), BTA No. 2015-849, unreported, at 2, "[w]hile it is possible that a single sale could reflect the general marketplace, arguably, several sales must be reviewed in order to definitively establish what constitute relevant market considerations on a particular tax lien date; at the least, when the number of available sales is limited, an analysis explaining how the limited sales available are reflect of market is warranted." We do not find the single sale cited by appellant sufficient to meet his burden.

Finally, appellant argues that defects in the condition of the subject property necessitate a reduction in value. As the Supreme Court stated in *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, "[a]s a general matter, '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.' *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 288, *** (1996)." (Parallel citation omitted.) Id. at ¶27. As this board has repeatedly stated, a party must do more than simply demonstrate the existence of negative factors; it must also demonstrate the impact such factors have on the property's value. In the absence of an appraisal quantifying the effect of any negative factors on the value of the property, we find appellant's evidence insufficient to support a reduction in value.

Based upon the foregoing, we find appellant failed to meet his burden to prove a value different than that originally determined by the county auditor. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$248,790

TAXABLE VALUE

$87,080

OHIO BOARD OF TAX APPEALS

KAREN M. WEAVER, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1923

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KAREN M. WEAVER
OWNER
3274 LILLWOOD LN
CINCINNATI, OH 45251

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, February 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), the notice of appeal, and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that the BOR decision was mailed on October 10, 2018. Although appellant timely filed a notice of appeal with this board, a notice of the appeal was not received by the BOR until November 13, 2018; thirty-four days after the mailing of the decision. Appellant's response provided a U.S. postal service certificate of mailing, dated November 8, 2018. Unlike notices sent by certified mail,

which, under R.C. 5717.01 are deemed filed on the date *mailed* rather than *received*, notices sent by regular mail are deemed filed when they are received. *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4302, ¶10 ("[a] paper is filed when it is delivered to the proper official and by him received and filed."). See also *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St3d 192 (1989); *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621 (1998).

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MICHAEL TODD DAWSON, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1887

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL TODD DAWSON
Represented by:
MICHAEL DAWSON
PO BOX 40306
CINCINNATI, OH 45240

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Friday, February 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of the

appeal was filed with the BOR thirty-four days after the mailing of the BOR's decision. Appellant argues for an equitable decision, given that the basis of his appeal was the BOR's failure to properly notify him of their hearing on his complaint. See R.C. 5715.19(C). However, this board has no equitable jurisdiction and can only decide those issues properly appealed to us. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953). Because the record clearly indicates that appellant failed to timely file the appeal, we are unable to reach the issues raised as to the BOR proceedings.

Based upon the foregoing, the county appellees' motion is well taken and we find that we lack jurisdiciton over this matter. The motion to dismiss is granted, and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

BARBARA GANAWAY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-2139 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BARBARA GANAWAY
Represented by:
JASMINE GANAWAY
16781 CHAGRIN BLVD
CLEVELAND, OH 44120

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, February 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have

jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SANDEEP & TANMAYEE DIXIT, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1922 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SANDEEP & TANMAYEE DIXIT
Represented by:
TANMAYEE DIXIT
OWNER
668 ECHO DR
GATE MILLS, OH 44040

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On November 8, 2018, the appellants filed an application for remission with this board. Appellants did not include a copy of a county board of revision decision. The record reveals that there is no record of a decision issued for the application.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants

have not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARLENE MEDLEY, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1704

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARLENE MEDLEY
347 BASSETT ROAD
BAY VILLAGE , OH 44140

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

On October 18, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The record reveals that there is no record of a decision issued for the application referenced in the filing with this board.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter

must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-39

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LOWE'S HOME CENTERS, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BROOKLYN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, February 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon an appeal filed by appellant property owner Lowe's Home Centers, LLC, from a decision of the Cuyahoga County Board of Revision ("BOR"). The BOR found no change in value was warranted for the subject property, i.e., parcel number 433-15-004, for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the fiscal officer, the record of the hearing ("H.R.") before this board, and the parties' written arguments. Upon review of appellant's motion to strike the board of education's brief as having been filed one day after the established deadline, the motion is hereby denied.

The fiscal officer initially valued the subject property, an owner-occupied Lowe's retail store constructed in 1999, at $9,500,000 for tax year 2015. Lowe's filed a complaint against the valuation of the property seeking a decrease in value to $7,850,070; the appellee Board of Education for the Brooklyn City School

District ("BOE") filed a countercomplaint seeking to maintain the fiscal officer's value. At the BOR hearing, counsel for Lowe's appeared but presented no evidence in support of its requested value. Counsel for the BOE presented comparable sales data from CoStar. The BOR found that the owner failed to meet its burden, and issued a decision maintaining the fiscal officer's value.

On appeal to this board, both Lowe's and the BOE have presented appraisals of the subject property as of tax lien date. For its part, Lowe's presented the appraisal report and testimony of Richard G. Racek, Jr., MAI, who opined a value of $6,790,000 as of January 1, 2015. H.R., Ex. A. The BOE presented the appraisal report and testimony of Karen L. Blosser, MAI, who opined a value of $12,020,000 as of January 1, 2015. H.R., Ex. 6.

In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove his right to a deduction." *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision*, 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. When a party relies on an expert opinion of value to support its claim, such opinion must be both competent and probative. See generally *EOP-BP Tower*, supra. In *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 13 (1975) paragraphs two and three of the syllabus, the court held that "[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness" and that it "is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before the board."

We are mindful of several general principles in valuing a property of the size and configuration of the subject – a so-called "big box." As the Supreme Court explained in *Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision*, 146 Ohio St.3d 173, 2016-Ohio-371, the Ohio Constitution requires that real property be valued in terms of its exchange value, rather than its current use value. Id. at ¶24. The *Rite Aid* court, quoting *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964), explained "[t]he general rule is as follows:

> "'In the last analysis the value or true value in money of any property is the amount for which that property would sell on the open market by a willing seller to a willing buyer. In essence, the value of the property is the amount of money for which it may be exchanged, *i.e.*, the sales price.'" Id. at ¶24.

Such rule is not without exception. The court has permitted valuation according to a property's use in several situations, including "special purpose" properties. Id. at ¶29, citing *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision*, 12 Ohio St.3d 270 (1984). The *Dinner Bell* court acknowledged the "special purpose" exception applied "to a building in good condition being used currently and for the foreseeable future for the unique purpose for which it was built." *Dinner Bell*, supra, at 272, quoting *Fed. Res. Bank of Minneapolis v. State*, 313 N.W.2d 619, 623 (Minn.1981).

The *Rite Aid* court further explained that "[o]ne crucial element in determining the value of property in the overall market lies in the concept of 'highest and best use,'" and, "in the special-purpose situation one would expect to see: 'continued use by the current occupant in its ongoing business.'" *Rite Aid*, supra, at ¶34-35. The court, in *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, 145 Ohio St.3d 375, 2016-Ohio-372 ("*Lowe's I*"), relying on its prior decision in *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, indicated several factors that are significant in determining a property to be "special purpose" for purposes of valuation:

> "The property was brand new on the tax lien date, having been recently constructed at the cost of millions.
>
> "The property was being put to apparently successful business use for the purpose for which it

had been built.

> "The facility was massive, at 193,000 square feet, thereby raising the inference that it might not be easy to market for general retail use – an inference supported by the property owner's appraiser, who testified as to the immediate external obsolescence given the property's adaptation to Meijer's particular business use." *Lowe's I*, supra, at ¶20.

In light of the foregoing, we turn to the parties' respective appraiser's determinations of the subject property's highest and best use.

Mr. Racek determined the subject's highest and best use as follows:

> "The highest and best use of the subject property, as improved, is for the continued use as a single tenant retail facility. While the improvements were approximately 16 years old as of tax lien date and considered to be in average condition, they are functionally obsolete for most second generation users. Therefore, there is a substantial amount of accrued depreciation which is mostly from functional and economic obsolescence." H.R., Ex. A at 26.

Based on his determination of highest and best use, Mr. Racek selected "second-generation" sales and leases, i.e., of properties no longer occupied by their original intended users, in determining the subject's value. See *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1974,¶13, fn.2 ("*Lowe's II*") (defining "second-generation").

Ms. Blosser, on the other hand, determined the subject property's highest and best use, as improved, to be "for continued use by current occupant for its ongoing business." H.R., Ex. 6 at IV-2. She further explained in her report:

> "Since the improvements, as they currently exist, continue to make a substantial contribution to the overall value of the property, the continuation of the existing use is justified. There is no alternative, economically feasible use that could justify removal or conversion of the existing improvements at this time." Id.

Ms. Blosser accordingly relied on "first-generation" sales and leases, i.e., properties that continue to be occupied by their original intended users. See *Lowe's II*, supra, at ¶13, fn.2 (defining "first-generation").

Looking to the factors cited by the *Lowe's I* court, we note that Lowe's was still occupying the property as of the lien date, that the improvements span over 135,000 square feet, and that the subject property was sixteen years old on tax lien date. While this is not a brand-new property like the property in *Meijer*, supra, this property has not been vacated nor is there any clear indication in the record that Lowe's intends to vacate the property in the near future. The record before us unfortunately does not contain any testimony from an individual employed by Lowe's regarding its plans for operating at the subject property for the "foreseeable future." We must therefore rely on the expert opinions presented by each party through their appraisers and the data upon which they relied in formulating their opinions to determine whether this property is a "special purpose" property for purposes of valuation.

While we do not have first-hand testimony about Lowe's plans for the subject property in the foreseeable future, both appraisers, through their reports, have provided data about other Lowe's properties and the market in the area surrounding the subject property. Ms. Blosser's sale and rental comparables include numerous Lowe's properties that were subject to leases with terms ending at the time the buildings would be between 20 and 31 years old, i.e., sale comparables 1-4, 7-8, and lease comparables 1-3, 5-6. H.R., Ex. 6. Mr. Racek used three sales of other Lowe's properties that sold subject to leases that would end when the properties would be between 20 and 30 years old, i.e., sale comparables 6,7, and 9. H.R., Ex. A. Neither appraiser provided any data demonstrating that Lowe's had vacated a property after sixteen years, although

Mr. Racek anectdotally testified that "[b]ig box stores, while they can physically last longer than 20 years are – there's clear evidence that they're being torn down in the 20-year time frame." H.R. at 22. The only evidence in the record to support such statement is the razing and sale of a Super Kmart located near the subject, discussed below.

Beyond Lowe's specific business practices, as demonstrated through its leases of properties with terms extending to a property's age of between 20 and 30 years, we look to the specific market in which this property is located. Mr. Racek indicated several other spaces within the shopping center in which the subject Lowe's operates are now occupied by second-generation users, including Ashley Furniture (occupying a former Circuit City space), or are vacant, including a former Valu King space. Id. at 16-19. See also id. at 22-23, H.R., Ex. A at 20 (discussing other second-generation tenants in the nearby area). There was extensive discussion at this board's hearing about the former Super Kmart, located in close proximity to the subject property, which was built in 1994, vacated in 2014, and ultimately sold and demolished for a Menard's to be rebuilt at the site. Id. at 21-22, 75. Lowe's argues such transaction illustrates that build-to-suit properties of the same approximate size and age as the subject have no functional utility, even to second-generation users. H.R., Ex. A at 26. The BOE, other hand, argues that Menard's plan to build in the immediate area demonstrate that it is a strong retail market in which developable land is in high demand. Indeed, the BOE notes that there are no vacancies of big box stores in the subject's immediate area. H.R. at 77. Moreover, counsel for the BOE noted that Kmart and its owner (Sears) were in financial difficulty at the time and were closing many Kmart stores.

Based upon the foregoing, we conclude that Ms. Blosser's highest and best use for the subject property, based on its current use by its current occupant, is most appropriate. Therefore, we find the "special purpose" doctrine to be applicable and the consideration of first-generation comparables to be appropriate. We reject Mr. Racek's determination of highest and best use and his reliance on second-generation comparables. Accordingly, we find Mr. Racek's opinion of value is not probative of the value of the subject property as of January 1, 2015.

We likewise reject Lowe's argument that R.C. 5713.03 forbids any consideration of the current tenant (Lowe's) remaining in the property after January 1, 2015. R.C. 5713.03 states:

> "The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the *fee simple estate, as if unencumbered* but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner." (Emphasis added.)

See also Ohio Adm. Code Chapter 5703-25.

Under this valuation standard, Lowe's argues, a property must be assumed to be vacant on tax lien date and to be sold to a new owner that will either occupy the property itself or lease the property to another. Lowe's explains its argument, in relation to "big box" properties, as follows:

> "There are two distinct markets for 'big box' retail properties such as the subject. The first is the market for encumbered properties, which can be termed the 'investment market.' Encumbered properties are attractive to investors who seek a passive income stream associated with the lease contract. The factors considered by investors are the years remaining on the lease term, the credit rating of the tenant in place, which gives assurance the investor will be paid, and lastly, the rental rate in place. A property that is encumbered by a 20-year lease to a high-credit tenant for $4.00 per square foot would surely sell for much more than a property

> encumbered by a 5 year lease to a low-credit tenant for $5.00 per square foot. The sale price of 'investment market' encumbered properties is totally dependent on the terms of the lease contract in place. The second market is the market for unencumbered properties. Unencumbered properties are purchased either by parties who intend to occupy the space for their own use or those who seek to find a tenant for the space after the purchase. Unencumbered properties are not valued based solely on lease terms because no lease is in place at the time of sale, as the purchaser obtains all rights inherent in fee simple title, including the right to occupy the property. ***
>
> "The Ohio Legislature mandates that only the second market, the unencumbered market, can be taxed." Appellant's Reply Brief at 2-3.

The Supreme Court specifically rejected such argument in *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370, finding no legal error in an appraiser valuing an owner-occupied property as if it were generating market rate income under a hypothetical lease:

> "We addressed the propriety of appraising owner-occupied property as if it were leased in *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, ***, ¶21-23. After recognizing that a property owner may be able to realize the value of its property by encumbering it with a lease, we concluded that an appraiser may take that possibility into account when valuing it. *Id.* at ¶23; ***. Appraising property in this way is consistent with R.C. 5713.03's directive to determine 'the true value of the fee simple estate, as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market. *See* Appraisal Institute, *The Appraisal of Real Estate* 441 (14th Ed.2013) ('When the fee simple interest is valued, the presumption is that the property is available to be leased at market rates'); Ohio Adm..Code 5703-25-07(D)(2) (authorizing use of income-capitalization approach in valuing real estate)." (Parallel citation omitted.) Id. at ¶27.

See also *Lowe's II*, supra, at ¶20 ("the language of R.C. 5713.03 applies to the valuation of the property itself – it does not prescribe any standards to be applied in a comparable-sales analysis."). We reject Lowe's argument that any consideration of the income that could be generated from the subject property through a market lease is contrary to law.

We therefore turn to Ms. Blosser's appraisal report. Ms. Blosser developed all three approaches to value. After giving significant weight to both the income capitalization and sales comparison approaches, and minimal weight to the cost approach, Ms. Blosser determined the subject property's fee simple value as of January 1, 2015, was $12,020,000. H.R., Ex. 6 at VIII-1.

In her cost approach, she used six comparable land sales (including the former Super Kmart that was purchased to be demolished and rebuilt as a Menard's) to arrive at a land value of $2,900,000 (or $265,000 per acre). She then used Marshall & Swift Valuation to determine a total replacement cost for the improvements of $13,027,544, from which she deducted 5% for entrepreneurial incentive and 40% for depreciation (assuming a 40-year life span for the building). She found no functional obsolescence, nor any external obsolescence. Adding the land value to her improvement value, she arrived at a value of $11,370,000 for the subject property as of January 1, 2015. H.R., Ex. 6 at VII.

In her sales comparison and income capitalization approaches to value, Ms. Blosser relied on first-generation sale and lease comparables. In determining a market lease rate for the subject under the income approach, Ms. Blosser looked to eight lease comparables (including six other Lowe's properties) which she adjusted to a range of $6.48/SF - $9.25/SF, data from CoStar about the Cleveland southwest retail submarket, and local asking rents for "larger" second-generation properties. She ultimately concluded the subject property would be leased, on a net basis, at $7.25/SF on tax lien date. She further determined that a 7% vacancy rate was appropriate, determined expenses during the period of any such vacancy, and

calculated a net operating income of $853,213. Finally, she capitalized the income at 7.2% (including tax additur) after considering data on the national net lease market, the freestanding retail market, the national big box market, and the capitalization rates derived from her eight leased comparable sales, to arrive at a value conclusion under the income capitalization approach of $11,850,000.

Lowe's attacked Ms. Blosser's lease comparables, arguing that seven of the eight used were lease renewals and therefore not negotiated on the open market. Further, Lowe's presented evidence that additional items were included in the renegotiation of several leases, including the lease in comparable 3, which included giving the tenant a right of first refusal and eliminating percentage rent, and the lease in comparable 2, which included a credit for a new roof. H.R. at 244-245, 277-278, Exs. C-D. See also H.R., Ex. B. Lowe's noted that Ms. Blosser's opinion of market rent for the subject far exceeded the actual rents at two other spaces within the subject's shopping center, at $4.86/SF and $5/SF. However, Ms. Blosser countered that she considered the rent on the former ValuKing space, which, though rented at the time to a Halloween store for $4.86/SF, was being advertised for lease at $10/SF. H.R. at 156. She also indicated, in her report and through her testimony, that she relied not only on the eight lease comparables, but also on CoStar information about retail rents in the Cleveland southwest submarket (at $11.04/SF) and local asking rents in the subject's near area (ranging from $10/SF to $14/SF). H.R., Ex. 6 at III-5-6. Her summary of rents reveals that her opinion that the subject property would garner $7.25/SF is well within the range of all three sources.

Lowe's points to Mr. Racek's rental data as more indicative of the property's value; however, his selection of such data was premised on his belief that the subject property is functionally obsolete even for second generation users. Given that his selection was based on the premise that Lowe's would vacate the property and it would be rented to a second generation tenant, we find his rental data not probative of the subject property's value on tax lien date

Ms. Blosser's sales comparison approach used ten comparable sales, including eight that sold subject to a lease, i.e., "leased fee sales," and two that sold in fee simple. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶26, fn.1. After adjusting for conditions of sale, date of sale, and location, Ms. Blosser further adjusted the leased fee sales based on "economic characteristics" and occupancy. For each, she compared her opinion of market rent and occupancy for the subject property ($7.25/SF and 7%, respectively) to the rents and occupancies of each of the leased fee sale comparables and made adjustments accordingly. H.R., Ex. 6 at VI-31. She concluded to an adjusted range of $77/SF to $152/SF. Id. at VI-33. Relying more heavily on the adjusted lease fee sales, which she found most appropriate given her highest and best use, she concluded to a value of $90/SF for the subject property, and an overall value of $12,180,000 (rounded) for the subject property under the sales comparison approach.

While Lowe's argues that Ms. Blosser failed to follow the court's directive in in *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836, at ¶36, to adjusted leased fee sales comparables to a property that is not subject to a lease, given her statement that she made no "specific property rights adjustment," Id. at VI-26, we disagree. The *Rite Aid* and *Lowe's I* court made clear "the general rule that leased comparables will typically need to be adjusted in determining the value of a subject property that is itself unencumbered by a lease." *Lowe's II*, supra, at ¶16. Ms. Blosser complied with the directive to adjusted leased comparables, through her economic characteristics and occupancy adjustments. (As such, we deny Lowe's motion to strike Exhibit 10, a letter through which Ms. Blosser explained how adjustments were made to leased fee sales, as such letter merely explains what is already within the appraisal report.) Her adjustments are similar to those made by the appraiser in *Lowe's II*, supra. The appraiser in *Lowe's II* adjusted his leased comparables to determine whether the rent for each comparable was at market at the time of sale, and how the rent compared to what the subject property could generate. Id. at ¶26. The court found no legal error in such analysis; instead, it remanded for this board to evaluate and weigh the adjustments under *Steak 'n' Shake*, *Rite Aid*, and *Lowe's I*.

The BOE argues Ms. Blosser's adjustments were appropriate. In her testimony, Ms. Blosser cited to the definition of "property rights adjustment" in The Dictionary of Real Estate Appraisal (6th Ed.2015) 179: "An adjustment made to the indicated property value if the value of the property is not at market occupancy or market rent." H.R. at 195, Ex. 8. See also The Appraisal of Real Estate (14th Ed.2013) 406 ("To compare this leased fee interest to the fee simple estate of the subject property, the appraiser must determine if the contract rent of the comparable property was above, below, or equal to market rent.") For the eight leased fee sales used in her sales comparison approach, Ms. Blosser made such adjustments. She found sales 1, 2, and 7 had rents below her estimated rent for the subject property; sales 3, 5, and 8 had rents similar to the subject; and sales 9 and 10 had rents higher than the subject's estimated rent. She further adjusted all leased comparables, which were 100% occupied at the time of sale, downward to adjust for her estimate of 7% vacancy for the subject. H.R., Ex. 6 at VI-31. Notably, Ms. Blosser's approach, though more detailed, appears to be the same taken by Mr. Racek in adjusting his own leased sale comparables. H.R., Ex. A at 50-51. We find such adjustments appropriately accounted for the effect of the leases on the sale prices of her sales comparables.

Lowe's argues that Ms. Blosser could not have appropriately adjusted the leased fee sales upon which she relied, given the stark contrast illustrated in a list of 46 big box sales included in her report. H.R., Ex. 6 at VI-2. Of those sales, twenty sold without a lease in place, at an average price of $22/SF; of those sales that sold with a lease in place, the average price was $79/SF. Appellant's Brief at 6. Lowe's argues that, because Ms. Blosser's conclusion under her sales comparison approach - $90/SF – is above even the average of her leased fee sales of big box properties, her conclusion cannot reflect market value, particularly of an owner-occupied property as the subject was on tax lien date. As Ms. Blosser acknowledged during her testimony, the list of sales to which Lowe's refers is was compiled to "get a general idea of arm's-length transactions that were recorded." H.R. at 226-227. In narrowing down to her ten comparable sales, she focused on those most appropriate for valuing the subject property, which she found would continue to be used by its current tenant, Lowe's. We find Lowe's arguments about Ms. Blosser's selection of comparable sales goes to the already rejected argument that the subject property must be valued as if it would be vacated by Lowe's on tax lien date. Further, we note that reliance on the average of the sales fails to recognize that Ms. Blosser's value of $90/SF is well within the range of the 46 sales analyzed by Lowe's, i.e., $8.12/SF to $164/SF.

It is the duty of this board to independently determine value based on the evidence presented. Based on the foregoing discussion, we find Ms. Blosser's opinion of value at $12,020,000 best represents the true value in money of the subject property as it existed on tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

TRUE VALUE

$12,020,000

TAXABLE VALUE

$4,207,000

OHIO BOARD OF TAX APPEALS

VAZ PROPERTIES UMESH VAZIRANI, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-84

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VAZ PROPERTIES UMESH VAZIRANI
Represented by:
UMESH VAZIRANI
MANAGER
2247 PLANETREE COURT
COLUMBUS, OH 43235

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

BOARD OF EDUCATION OF THE WORTHINGTON CITY SCHOOL DISTRICT
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Thursday, February 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education moves to dismiss this matter on the basis it was not timely filed with this board or the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that

notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of appeal was filed with this board, and with the BOR, thirty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SHAE PHILLIPS, (et. al.),

Appellant(s),

vs.

OTTAWA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-832

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHAE PHILLIPS
200 N TETTAU RD
PO BOX 204
LACARNE , OH 43439

For the Appellee(s) - OTTAWA COUNTY BOARD OF REVISION
Represented by:
JAMES VANEERTEN
OTTAWA COUNTY PROSECUTING ATTORNEY
OTTAWA COUNTY
315 MADISON ST., 2ND FLR
PORT CLINTON, OH 43452

PORT CLINTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Thursday, February 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals to this board from a decision of the Ottawa County Board of Revision ("BOR") determining the value of parcel number 0160682408907000 for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of the hearing before this board, at which only appellant appeared.

At the outset, we must address the county appellees' motion to dismiss this matter for lack of jurisdiction, filed fifteen days after this board's merit hearing. This board's subject matter jurisdiction may be raised at any time; however, "[t]he failure of a litigant to object to subject-matter jurisdiction at the first opportunity is undesirable and procedurally awkward." *Gates Mills Invest Co. v. Parks*, 25 Ohio St.2d 16, 19-20 (1971). See also Ohio Adm. Code 5717-1-07(A)(1)(c). Here, this board convened a hearing on the merits of this matter before the jurisdictional issue was raised. The county appellees are advised that, in the future, this board expects jurisdictional defects to be raised in a timely manner so that the resources of all parties may be better served.

The county appellees' motion asserts that appellant failed to file notice of the appeal with the BOR. Appellant did not respond to the motion. R.C. 5717.01 requires that an appeal filed with this board also be filed with the county board of revision within thirty days of the mailing of the board of revision's decision. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. **** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See also *Cincinnati School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty.*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner."). The record in this matter does not demonstrate that appellant filed notice of the appeal with the Ottawa County Board of Revision. The county appellees' motion is therefore well taken and this matter must be dismissed for lack of jurisdiction.

We note that, even if this board had jurisdiction to consider the merits of appellant's appeal, we would have found she did not meet her burden of proof. Appellant argued that the subject property is overvalued due to its defects; however, she failed to provide any evidence of the impact such defects have on the property's value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7 ("the list of defects are simply variables in search of an equation.").

It is the order of this board that this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1960
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

ROUSH EQUIPMENT INC.
Represented by:
DANIEL BRINGARDNER
ATTORNEY AT LAW
ISAAC WILES
2 MIRANOVA PL., STE 700
COLUMBUS, OH 43215-5098

Entered Thursday, February 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Westerville City Schools Board of Education ("BOE") appeals to this board from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcels 080-001977 and 080-011554 for tax year 2016. The parties waived their appearances at a hearing before this board. We therefore consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and the parties' written arguments.

[2] The auditor valued the parcels at a total of $867,900 for tax year 2016. The BOE filed a complaint seeking an increase from the auditor's value to $1,800,000, to reflect the price for which the parcels sold in November 2016. As evidence of the sale, the BOE presented the conveyance fee statement and general

warranty deed. Although it did not file a countercomplaint, property owner Roush Equipment Inc. ("Roush") appeared at the hearing through counsel and argued that the sale was the result of duress, as the owner sought additional land needed for its automotive sales business on adjacent property. Mark VanBenschoten, CFO of Roush, testified that the subject parcels were purchased to fulfill Roush's need for additional space for its used car business and for housing its inventory of new cars. Mr. VanBenschoten testified that, prior to the purchase, Roush was storing 140 cars on a nearby property pursuant to a license subject to termination with 15 days' notice. Given the risk involved with losing the ability to store cars at that property, and another property at which it stored cars pursuant to a lease, Roush sought additional land adjacent to its main campus location on Schrock Road. Though he was not involved in the negotiation of the ultimate sale price, Mr. Van Benschoten indicated that the subject property had not been listed on the open market prior to the sale. Roush also presented a lease termination agreement for a day care center located on parcel number 080-001977. Mr. Van Benschoten testified that the $1,800,000 sale price included $200,000 paid to the tenant under that lease to buy out the remaining term of the lease. The building housing the day care center, as well as an office building on parcel 080-011554, were demolished after the sale.

[3] As an alternative to valuing the subject parcels in accordance with the sale, Roush presented the testimony and appraisal reports of Stephen C. Hopkins, a state-certified general real estate appraiser. Using the sales comparison and income approaches to value, Mr. Hopkins opined a value of $560,000 for parcel number 080-001977, and $470,000 for parcel number 080-011554, as of January 1, 2016. Mr. Hopkins indicated that he had previously appraised the subject parcels for Roush to use in its negotiation of the sale, and then updated the appraisals to reflect value as of tax lien date for tax valuation purposes. In response to questions from counsel for the BOE, Mr. Hopkins indicated that the highest and best use of the parcels was as improved, rather than as vacant land; he was not aware of the cost of demolishing the two buildings on the parcels.

[4] Upon review of the evidence presented, the BOR adopted Mr. Hopkins' appraisal values, and decreased the values of the parcels accordingly.

[5] On appeal to this board, the BOE again requests the subject parcels' values be increased to reflect the November 2016 sale price, and Roush again argues that the sale does not reflect market value.

[6] In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. As we consider the November 2016 sale of the subject parcels, we first consider whether the sale was conducted at arm's-length. It does not appear that Roush contests the recency of the sale to tax lien date.

[7] The Supreme Court has explained that an arm's-length sale "is characterized by these elements: it is voluntary, i.e. without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). A sale is not arm's-length when it is conducted under duress characterized by "compelling business circumstances." *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540, 548 (1996). Roush argues that it was compelled to purchase the subject parcels because of the relatively small footprint of its (adjacent) main campus and the risk of storing its inventory of cars at other locations. Certainly this is not a situation where Roush faced "swift and sure corporate death" if it failed to purchase these parcels. Id. at 549.

[8] As we acknowledged in *Kroger Ltd. Partnership I v. Hamilton Cty. Bd. of Revision* (Sept. 13, 2018), BTA No. 2016-2353, unreported, "there exists situations in which a purchaser's assemblage of several properties can provide the basis for inequality in bargaining"; however, "the mere allegation of a purchaser's desire to accumulate property in a particular area is not itself tantamount to economic duress." Here, Mr. VanBenschoten testified that the president of Roush negotiated with the former owner of the parcels, and, indeed, Mr. Hopkins indicated he prepared appraisals of both parcels to assist Roush in the negotiations. We find appropriate the BOE's citation to this board's decision in *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 15, 2012), BTA No. 2009-K-1569, unreported, involving similar

facts, where we stated:

> "[E]very sale of property necessarily involves a motivated seller and a motivated purchaser, both having their own subjective reasons for entering into the agreement. It is only when it is proven that one party is vested with such disparate bargaining power as to essentially hold the other party 'hostage' to a particular price that a sale may be deemed to fall within the extraordinary circumstances contemplated by the court in *Lakeside Avenue*, supra." Id. at 6.

[9] Roush was not compelled to purchase the subject parcels; it made a business decision that resulted in the November 2016 sale price. While Roush additionally cites to the fact that the parcels were not listed on the open market, the Supreme Court noted in *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, at ¶29, that "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." Upon review of the circumstances of the sale, we find nothing about its circumstances that would render the sale anything other than arm's-length.

[10] Having so found, we now must determine the appropriate sale price. Roush argues that $200,000 of the $1,800,000 was paid to the tenant of parcel number 080-001977 to terminate its lease, and presented the lease termination agreement and closing statement as evidence. S.T., Ex. F. Mr. VanBenschoten testified that the lease was terminated to allow Roush to demolish the leased building so that it could be used to expand Roush's car lot. S.T., Ex. E. This board recently found a lease termination fee is properly excluded from a sale price. *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Mar. 6, 2018), BTA No. 2017-476, unreported. See also *Orange City School Dist. Bd. of Edn. v. Cuyahgoa Cty. Bd. of Revision*, 152 Ohio St.3d 325, 2017-Ohio-8817; *Sapina v. Cuyahoga Cty. Bd. of* Revision, 136 Ohio St.3d 188, 2013-Ohio-3028; *St. Bernard Self Storage, L.L.C. v. Hamilton Cty. Bd. of* Revision, 115 Ohio St.3d 365, 2007-Ohio-5249. Upon review of the evidence and testimony presented as to the lease termination, we find the $200,000 lease termination fee is properly excluded from the sale price for the real property.

[11] Based upon the foregoing, we find that the subject parcels were purchased in a recent, arm's-length transaction in November 2016 for a sale price of $1,600,000. However, our inquiry does not end. Roush presented appraisals of the subject parcels to rebut the presumptions accorded to the sale. We therefore must independently evaluate the appraisals to determine whether the sale price indicates the true value of the subject real property. *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4302, ¶9.

[12] At the outset, we note that Mr. Hopkins appraised both parcels at their highest and best use as improved. He noted that he had previously prepared appraisals for Roush to use in its negotiation of the purchase of the parcels; he testified at the BOR that he updated the appraisals to reflect value as of tax lien date for the purpose of real property tax valuation. Mr. Hopkins acknowledged in his highest and best use analyses that "[t]he most likely buyer is crucial to highest and best use"; however, he failed to consider the most likely buyer being the adjacent property owner seeking to expand its main campus footprint – Roush. We therefore find Mr. Hopkins' analyses of little value to our determination of whether Roush's purchase of the parcels, with the intention of demolishing the improvements and making them part of its existing footprint, is reflective of fair market value.

[13] Mr. Hopkins' appraisals reflect the market value of the parcels if they were sold for continued use as improved parcels. His selection of comparable sales for parcel number 080-001977 specifically focused on other day care centers, to which he made adjustments of between 25% and 35% for differences in location, physical condition, construction quality, and parking ratio. He concluded to a value under the sale comparison approach for parcel 080-001977 of $125/SF, for a total of $530,000. He also analyzed parcel number 080-001977 under the income approach, concluding that the contract lease rate at the time was at or near market levels. After accounting for 5% vacancy and collection loss, and expenses, he derived a net operating income of $59,199, which he capitalized at 10% to arrive at a value conclusion of $590,000. He reconciled the two approaches to a final value conclusion of $560,000 as of January 1, 2016.

[14] He likewise appraised parcel number 080-011554 as if it were to be used for continued office use. His sales comparison approach used three multi-tenant office building comparables, which sold for prices between $65.20/SF to $78.13/SF. After adjusting for location, land to building ratio, age, physical condition, presence of a basement, and "medical finish," he concluded to an adjusted range of $57.29/SF to $62.50/SF, and opined a value of the subject of $58/SF, or $475,000. In his income approach, he acknowledged that "the subject owner is planning to sell the subject to the adjoining car dealership who will raze the subject building," and, therefore, "leases are short term with below market rates." He therefore looked to market lease rates, and concluded to a lease rate of $13.50/SF for the upper level of the office building, and $11/SF for the lower level. After deducting 8% for vacancy and collection loss, and expenses, he derived a net operating income of $53,767, which he capitalized at 13.04% (including a tax additur), to arrive at a value of $412,000. He reconciled the two values to arrive at a value conclusion of $470,000 as of January 1, 2016.

[15] As indicated above, we find Mr. Hopkins' analyses of the subject parcels of little value in determining whether Roush's purchase of the parcels reflect the parcels' market value. His appraisals indicate that the value of the parcels to a buyer who would continue to lease the improvements on the parcels would be below the price for which Roush purchased the parcels. We find Roush's purchase reflects a higher value than that reflected in Mr. Hopkins' appraisals due to their combined "plottage" value. The Appraisal of Real Estate (14th Ed.2013) 199. Mr. Hopkins' appraisals demonstrate that the subject parcels have a greater value when made part of a larger economic unit consisting of Roush's adjacent property on which its retail business is located. See *Park Ridge Co. v. Franklin Cty. Bd. of Revision,* 29 Ohio St.3d 12 (1987). We therefore find that Roush's appraisal evidence fails to rebut the presumption accorded the November 2016 sale.

[16] Accordingly, we find the best evidence of the subject parcels' values as of tax lien date is the November 2016 sale to Roush for $1,800,000, less the $200,000 lease termination fee, as explained above. It is therefore the order of this board that the true and taxable values of the subject parcels, as of January 1, 2016, were as follows:

PARCEL NUMBER 080-011554

TRUE VALUE

$935,590

TAXABLE VALUE

$327,460

PARCEL NUMBER 080-001977

TRUE VALUE

$664,410

TAXABLE VALUE

$232,540

OHIO BOARD OF TAX APPEALS

KUDZU, INC., (et. al.),

Appellant(s), vs.

GREENE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).

CASE NO(S). 2018-959

(REAL PROPERTY TAX)

DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - KUDZU, INC.
Represented by:
JANET MILLER
PROPERTY OWNER AGENT
KUDZU, INC.
633 NORT BROAD STREET
FAIRBORN, OH 45324

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

FAIRBORN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
BENJAMIN YODER
ATTORNEY AT LAW
FROST BROWN TODD LLC
9277 CENTRE POINTE DRIVE
SUITE 300
WEST CHESTER, OH 45069

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant property owner, Kudzu, Inc. ("Kudzu"), appeals a decision of the Greene County Board of Revision ("BOR"), which rejected Kudzu's complaint to lower the taxable value of parcel numbers A02000100110000700 and A02000100040000100. This matter is now considered upon Kudzu's notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01. No party filed additional written argument. For the foregoing reasons, we affirm.

The two subject parcels sit adjacent to one another. A large office building sits on A02000100110000700. Kudzu rents the large office space to tenants. A smaller office building sits on A02000100040000100. Kudzu rents the smaller office building to its owner, Janet Miller, who is a realtor. She uses the space as her realtor's office.

For tax year 2017, the county auditor assigned the two parcels a combined true value of $929,810. Kudzu filed a complaint with the BOR arguing the properties had a combined value of only $695,000. While Kudzu's complaint listed 2018 as the tax year, the reduction request could only have been for 2017. SeeR.C. 5715.19(A)(1) ("a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the *ensuing* tax year"); see also *Sheldon Rd. Assoc., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 131 Ohio St.3d 201, 2012-Ohio-581. In support, Kudzu cited a July 2016 commercial appraisal, which valued the properties at $695,000. Appellee Fairborn City Schools Board of Education ("BOE") filed a counter complaint asking the BOR to retain the auditor's original valuation.

At the BOR hearing, Kudzu relied primarily on the July 2016 commercial appraisal. According to Kudzu's owner, the appraisal was completed after an unsolicited buyer approached Kudzu about the purchase of both properties. The appraisal was conducted by Logix Real Estate Solutions for WesBanco Bank, a potential mortgagee. The appraisal was conducted in accordance with the Uniform Standards of Professional Appraisal Practice by an Ohio-certified real estate appraiser. However, the parties never completed the sale.

Kudzu's owner also testified that the buildings needed upgrades. She then noted the recent difficulty renting the space because changes to the local road system rendered the properties less desirable to tenants. The BOE argued the appraisal was stale having been completed almost 6 months prior to the tax lien date, January 1, 2017. The BOR affirmed the auditor's valuation. Kudzu appealed.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). In order to meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bear the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12, quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23. An owner may present an appraisal to meet that burden. See, e.g., *Musto v. Lorain Cty. Bd. of Revision*¸148 Ohio St.3d 456, 2016-Ohio-8058, ¶¶ 40-42. However, the appraisal must present competent and probative evidence of the value on the tax lien date and not an earlier or later period. Jakobovitch, supra,at ¶¶ 15-17.

The facts of *Jakobovitch* are similar to the facts of this case. Id. at ¶ 12. In *Jakobovitch*, a property owner presented an appraisal opining the value of a parcel as of July 2010; however, the relevant tax lien date was January 1, 2013. Id.at ¶¶ 14-15. We "refused to credit" the appraisal finding it stale, and the Ohio Supreme Court affirmed. Id. The court held "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id., quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997).

The *Jakobovitch* appraisal is also similar to Kudzu's appraisal because there was no testimony from the appraiser, and both appraisals were created for financing purposes. In affirming us, the *Jakobovitch* court held that "[i]n the absence of supporting testimony, applying a financial appraisal in the tax-valuation setting can be problematic because it may not necessarily represent 'a complete and thorough evaluation of the property.'" Jakobovitch, supra,at ¶ 15, quoting *Mezler v. Pickaway Cty. Bd. of Revision* (Oct. 21, 2005), BTA No. 2004-R-481, unreported. Notably, no party actually acted in reliance on the appraisal during sale negotiations. Compare *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio

St.3d 503, 2016-Ohio-1485 (auditor's valuation can be negated by finance appraisal when actually relied upon).

We also find Kudzu's ancillary arguments about building repair unpersuasive. Kudzu's conclusory statements are not corroborated by any non-testamentary evidence, nor does Kudzu explain how the needed repairs would affect the true value of the parcels. See *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996) ("[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value").

Accordingly, we affirm the BOR. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER A02000100110000700

TRUE VALUE

$618,190

TAXABLE VALUE

$216,370

PARCEL NUMBER A02000100040000100

TRUE VALUE

$311,620

TAXABLE VALUE

$109,070

OHIO BOARD OF TAX APPEALS

JEFFREY L. AND ANDREA D. CRAMER, (et. al.),	CASE NO(S). 2018-889
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
COSHOCTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JEFFREY L. AND ANDREA D. CRAMER
Represented by:
JEFF CRAMER
7810 FOUNTAIN NOOK ROAD
APPLE CREEK, OH 44606

For the Appellee(s) - COSHOCTON COUNTY BOARD OF REVISION
Represented by:
JASON W. GIVEN
PROSECUTING ATTORNEY
COSHOCTON COUNTY
318 CHESTNUT ST.
COSHOCTON, OH 43812-1116

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the appellant property owners' appeal from a decision of the Coshocton County Board of Revision ("BOR"), in which it determined the value of parcel number 018-00000148-00, for tax year 2017. We proceed to decide the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and appellant's written argument.

The subject property consists of approximately 5.4 acres of land and is improved with a single-family home and a pole barn. The auditor initially valued the subject property at $61,310 for tax year 2017. Appellants filed a complaint against the valuation, seeking a decrease in value to $36,310 based on the poor condition of the home on the property. Although the BOR sent notice of its hearing to the address listed on appellants' complaint, appellant Jeff Cramer indicated at this board's hearing that such address is not appellant's mailing address and they did not receive the hearing notice. H.R. at 9-11. In its decision hearing, the BOR noted that the subject property had sold to appellants in June 2017 for $85,000 and included in the record a copy of the conveyance fee statement demonstrating such sale. Because there was no indication that the June 2017 sale was anything other than arm's-length, the BOR found it to be the best indication of the subject property's value for tax year 2017, and increased the value of the property to $85,000.

Appellants appealed to this board, seeking a decrease in value to $39,590. In their pre-hearing written argument, appellants indicated they filed the complaint so that the auditor would evaluate the house on the property and that they anticipated someone from the auditor's office would personally inspect the house to determine its value. At this board's hearing, Mr. Cramer explained that appellants purchased the property, which is adjacent to property on which they live and farm, to protect their own property and livestock. H.R. at 6. They had attempted to purchase the property on two prior occasions, and ultimately purchased the subject property in June 2017 for $85,000. Mr. Cramer indicated the sale price was not negotiated, though appellants were presented with several proposed prices during the course of the prior offers. Id. at 8-9. While appellants are using the pole barn on the property for storage, they consider the house unlivable and have boarded it up. Id. at 12-13. Appellants argue the sale does not represent the property's fair mrket value.

As the appellants in this matter, the burden is on the owners "to demonstrate that the value [they advocate] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23. See also *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4284.

"The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. There is no dispute that the subject property transferred six months after tax lien date for a price of $85,000. Appellants essentially argue that the sale was not arm's-length and/or not representative of market value due to their specific motivation for purchasing the property, i.e., to protect their own property and livestock.

An arm's-length sale is one that is voluntary, i.e., without compulsion or duress, and where the parties act in their own self-interest. *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). Here, there is no dispute that the parties to the sale were each acting in their own self-interests, as opposed to some common interest. Further, we find no indication that appellants were compelled to purchase the property. Certainly appellants had motivations for buying the property; however, such motivations do not amount to economic duress that would rebut the arm's-length nature of the sale. Compare *Lakeside Avenue Ltd. Partnership. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540, 548-549 (1996). Finally, while an arm's-length transaction is one that generally takes place in an open market, the fact that the subject property was not listed for sale on the open market is not dispositive. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶29-30. We find the June 2017 sale occurred at arm's-length and is recent to tax lien date.

In lieu of relying on the sale, appellants presented evidence of other, nearby properties' land values in support of a value below their sale price. We find such evidence is not probative of the subject's value. As the Supreme Court stated in *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996), "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." See also *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979).

Appellants further presented comparable land sales in support of a value lower than their sale price. The sales occurred in 2011 and 2001. Although appellants adjusted each sale for the time difference, at a 3% per year inflation rate, such adjustment does not equate to a proper adjustment for a change in market conditions from the date of sale and the relevant tax lien date. As explained in The Appraisal of Real Estate (14th Ed.2013) 414, "[m]arket conditions that change over time create the need for an adjustment [of a

comparable sale], not time itself." See also *Miles v. Hamilton Cty. Bd. of Revision* (Dec. 22, 1995), BTA No. 1995-J-270, unreported (rejecting the notion that real property values must necessarily rise or fall commensurate with inflationary/deflationary rates). The specific characteristics of properties that sold are likewise not adjusted to the subject property, nor can we discern from the information presented whether and what amount of adjustments would be necessary to render the properties comparable to the subject for purposes of determining its real property value. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. We therefore find the comparable property data to be insufficient in establishing a different value for the subject property.

Finally, though Mr. Cramer testified about the defects on the property, e.g., the condition of the home and the clean-up that was required after the purchase, there is no evidence in the record quantifying the effect of such defects on the value of the property. Without such additional information, we find the evidence of defects insufficient to support an adjustment in value. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996) ("Evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value."); *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7 (without evidence "that established how those defects might have impacted the property value ***[,] the list of defects are simply variables in search of an equation.").

Based upon the foregoing, we find appellants have failed to meet their burden of proof in this matter. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, are as follows:

TRUE VALUE

$85,000

TAXABLE VALUE

$29,750

OHIO BOARD OF TAX APPEALS

ANJO RENTAL HOLDINGS, JOE DUCKRO, (et. al.), Appellant(s), vs. GREENE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1054, 2018-1056, 2018-1057, 2018-1058, 2018-1059, 2018-1060, 2018-1062, 2018-1063, 2018-1065, 2018-1067, 2018-1068, 2018-1072, 2018-1073, 2018-1075, 2018-1076, 2018-1078, 2018-1079, 2018-1081, 2018-1083 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANJO RENTAL HOLDINGS
Represented by:
JOE DUCKRO
OWNER
2240 RICHARD STREET
DAYTON, OH 45403

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are now considered upon the county appellees' motion to dismiss, appellant's response, and the statutory transcript certified pursuant to R.C. 5717.01. In their motion, the county appellees assert these appeals were not timely filed and therefore fail to properly invoke the jurisdiction of this board. The relevant statute, R.C. 5717.01, requires that an appeal from a decision of a county board of revision ("BOR") be filed with this board, and with the board of revision, within thirty days of the mailing of the board of revision's decision. The county appellees assert the appeals were filed more than thirty days from the mailing of the decisions.

The statutory transcript indicates that the decisions from which appellant now appeals were mailed to appellant on July 6, 2018, by certified mail, using the following address: "2240 Richard Street, Dayton, OH 45402." The transcript also contains printouts from the United States Postal Service website showing the activity after the decisions were delivered to the post office. Such printouts show that the decisions were unable to be delivered on July 10, 2018, due to "problem with address," and/or "insufficient address." The decisions were thereafter, for reasons not apparent from the record, forwarded to Santa Rosa, California, on July 17, 2018. They were then routed back to Ohio, where delivery was attempted again on July 28, 2018, to an unspecified Dayton address, with the notation "No Access to Delivery Location." The decisions were

finally delivered on July 30, 2018. The proof of delivery receipt bears an illegible signature and a handwritten "address of recipient" of "545 Linden."

In response to the motion, Joe Duckro, member of the appellant property owner, states that "an imposter not an agent of [the property owner] received these mailings." Mr. Duckro argues that the BOR failed to properly serve him with notices of the decisions as required by statute.

At the outset, we note that Mr. Duckro does not appear to be an attorney. We therefore strike his response to the county appellees' motion, as such filing constitutes the unauthorized practice of law. *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶19, fn.2; *NASCAR Holdings, Inc. v. Testa*, 152 Ohio St.3d 405, 2017-Ohio-9118; Ohio Adm. Code 5717-1-02(B).

Upon review of the record, we find the BOR properly sent notice of its decisions by certified mail, as required by R.C. 5715.20, on July 6, 2018. Although the underlying complaints are notably absent from the statutory transcript certified to this board, the address used on the decisions is the same that appellant used when filing the notices of appeal with this board, i.e., the 2240 Richard Street address. Such address appears to be one that is reasonably calculated to give notice to the owner. *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, at ¶17. The BOR therefore properly complied with its duty to provide notice of its decisions. The subsequent re-routing and delivery failures by the postal service have no effect on the statutory appeal period. It is the date of mailing, not receipt, from which the appeal period begins. See, e.g., *Perrywatson v. Cuyahoga Cty. Bd. of Revision* (July 23, 2018), BTA No. 2018-578, unreported. Appellant had until August 6, 2018 to file notices of the appeals with this board and the BOR. It filed its notices of appeal with this board on August 15, 2018, and with the BOR on August 14, 2018.

The statutory requirements for filing a notice of appeal from a decision of a county board of revision to this board are mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision*, 61 Ohio St.2d 332 (1980); *Am. Restaurant & Lunch Co. v. Bowers*, 147 Ohio St. 147 (1946). Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Appellant failed to file notices of these appeals within the thirty-day statutory period. The county appellees' motion is well taken and these matters must be, and hereby are, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

GURVINDER VIRK, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-982

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GURVINDER VIRK
6259 ZEHMAN DRIVE
BROOKPARK, OH 44142

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant taxpayer appeals decisions of the board of revision ("BOR"), which denied applications for remission of penalties associated with delinquent payments of real property taxes for parcels 343-15-137, 342-09-063, and 344-27-037, for the first half of tax year 2017. We proceed to consider this matter based upon the notice of appeal, the record certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The appellant submitted three separate applications, which asserted that his failures to timely pay the real property tax due on the subject properties were based upon "reasonable cause and not willful neglect." In doing so, he stated that he was out of the country for pressing family issues when the real property tax bills were sent to him and submitted travel documents to support his assertion. As to parcels 343-15-137 and 342-09-063, the county treasurer recommended the applications be denied. The BOR determined that the appellant had not demonstrated reasonable cause based upon his history of delinquent real property tax payments, and denied the appellant's applications. However, as to parcel 344-27-037, the BOR granted the appellant's application. Thereafter, the appellant appealed all three BOR decisions with this board. The county appellees submitted written argument to assert that the appellant had failed to demonstrate that remission of the late payment penalties would be appropriate. We note that there is no justiciable issue as to the BOR's decision for parcel 344-27-037 because the appellant was granted the relief that he requested. See *Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA No. 2002-T-1271, unreported. Our

decision will, therefore, be limited to review of the BOR decisions for parcels 343-15-137 and 342-09-063.

When cases are appealed to this board, the burden is on the appellant to demonstrate the error in the board of revision's decision. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). See also *Estate of Raymond J. Battaglia v. Zaino* (Oct. 12, 2001), BTA No. 2001-L-511, unreported.

Based upon our review, we find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalties pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late payment penalties shall be remitted. Relevant to this matter, R.C. 5715.39(C) provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported.

In this matter, the BOR provided evidence to demonstrate the appellant's prior history of late payments of real property tax bills for parcels 343-15-137 and 342-09-063 for tax year(s) 2015 and/or 2016 and the appellant has not disputed such information. Furthermore, although we sympathize with the appellant's plight, even if he was not in the country at the time the real property tax bills were sent out, he was not excused from their timely payment. See R.C. 323.13 ("Failure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay.").

Based upon the foregoing, we find that the appellant has failed to satisfy the evidentiary burden on appeal. As such, we affirm the BOR's decisions to deny the appellant's requests for remission of the late payment penalty for the real property tax bills for parcels 343-15-137 and 342-09-063 for the first half of tax year 2017.

OHIO BOARD OF TAX APPEALS

BOWMAN, VICTOR, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-902

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BOWMAN, VICTOR
Represented by:
VICTOR BOWMAN
3922 S. MADISON AVE.
NORWOOD, OH 45212

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Victor Bowman appeals a decision of the Hamilton County Board of Revision ("BOR"). Mr. Bowman seeks a reduction in valuation on a single parcel from $177,720 to $125,000 for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the auditor, and the written argument of the parties. For the following reasons, we affirm the BOR.

The auditor valued the subject parcel at $177,720 for tax year 2017. Mr. Bowman filed a valuation complaint with the BOR requesting a reduction to $69,000. While Mr. Bowman did not appear for the BOR hearing, he presented documentary evidence of a 2012 sale of the subject parcel for $69,000. The BOR also accepted the written appraisal and sworn testimony of Ohio-certified residential appraiser Matthew Lemle on behalf of the auditor. Mr. Lemle noted the sale was not recent and recommended the BOR affirm the original valuation. The BOR did affirm the original valuation and issued a decision dated July 2, 2018.

After the BOR decision was issued, Mr. Bowman filed a newly-created appraisal with the BOR. In his written report, the appraiser valued the subject parcel at $125,000 using the sales comparison approach. When Mr. Bowman appealed to this board, he sent the appraisal to both us and the BOR. However, he did not request a hearing to submit new evidence outside the BOR transcript. See Ohio Adm.Code 5717-1-07 (this board will only receive new evidence at a hearing); Ohio Adm. Code 5717-1-16(A). Of note, Mr. Bowman adjusted his opinion of the parcel's value when he appealed to this board. His original complaint opined a value of $69,000; he now opines a value of $125,000, in accordance with the appraisal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). In order to meet that burden, an appellant must furnish "competent and probative evidence" of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bear the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12, quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, the sale must be recent. The Ohio Supreme Court has held a sale that occurred more than 24 months before tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. Here, Mr. Bowman's offered sale is nearly five years old, and he has presented no evidence demonstrating that market conditions remained unchanged between the sale date and the tax-lien date. See *Akron*, supra, at ¶ 26.

When there is no recent sale, an appraisal may be used. See, e.g., *Musto v. Lorain Cty. Bd. of Revision*¸148 Ohio St.3d 456, 2016-Ohio-8058, ¶¶ 40-42. Though Mr. Bowman submitted an appraisal, it is not properly part of the record before us. We will not consider evidence submitted outside the BOR transcript when no hearing before this board is requested. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported. We, therefore, cannot rely on Mr. Bowman's appraisal. We also note that the appraiser valued the property as of July 25, 2018, which is well past the relevant tax lien date. We have rejected stale appraisals in the past, and the Ohio Supreme Court has affirmed such decisions. For example, in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12, a property owner presented an appraisal opining the value of a parcel as of July 2010; however, the relevant tax-lien date was January 1, 2013. We "refused to credit" the appraisal finding it stale, and the Ohio Supreme Court affirmed. Id. The court held "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶ 15, quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). Notably, no party actually relied on the appraisal in a business or financial transaction. See *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 (auditor's valuation can be negated by older appraisal when appraisal actually relied upon).

Again, Mr. Bowman relies exclusively on the prior sale and the appraisal. The prior sale is not recent, and we cannot consider the appraisal. Accordingly, he has failed to present competent and probative evidence in support of his requested value. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 651-0040-0089-00

TRUE VALUE

$177,720

TAXABLE VALUE

$62,200

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-255, 2018-256
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

99 HOLDINGS, LLC
Represented by:
TONY TAN
OWNER
1718 BRYDEN ROAD
COLUMBUS, OH 43205

OHIO NEIGHBORHOOD HOUSING LLC
8901 S.R. 762
ORIENT, OH 43146

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The board of education ("BOE") and property owner appeal a decision of the board of revision ("BOR"), which determined the value of the subject properties, parcels 010-027175-00, 010-048332-00, and 010-112750-00, for tax year 2017. We proceed to consider this matter based upon the notices of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject properties were initially assessed at $152,000 for parcel 010-027175-00, $49,000 for parcel

010-048332-00, and $72,600 for parcel 010-112750-00. The property owner filed a complaint with the BOR, which requested reductions to the subject properties' values. The BOE filed a countercomplaint, which objected to the requests.

[2] At the BOR hearing on the matter, both the property owner and BOE appeared. Tony Tan, a member of the property owner, testified about the facts and circumstances of the property owner's purchases of the subject properties, the character of the subject properties and the neighborhood in which they were located, and the occupancy/vacancy of, and rental income derived from, the subject properties. The BOE cross-examined Tan and argued that the property owner failed to provide sufficient evidence to satisfy its evidentiary burden. At the BOR decision hearing, the BOR members noted that each of the subject properties had been the subject of transfers; however, the transfer of parcel 010-027175-00 was too remote to the tax lien date. As a result, for that parcel, the BOR voted to retain its initially assessed value of $152,000 because the property owner had failed to submit any other evidence of its value, i.e., appraisal report or comparable sales data. For the two remaining parcels, the BOR voted to accept the $24,500 sale in December 2015 of parcel 010-048332-00 and the $25,250 (rounded up to $25,300) sale in May 2015 of parcel 010-112750-00 as the best indication of each parcel's value. The BOR subsequently issued a written decision to that effect and these appeals ensued. This board consolidated the appeals based upon the BOE's unopposed motion to consolidate.

[3] At this board's hearing on the matter, both parties appeared and supplemented the record with additional argument and/or evidence. The BOE cross-examined Tan and argued that the BOR impermissibly reduced the values of parcels 010-048332-00 and 010-112750-00 based upon distressed sales, which were possibly conducted at auctions; the BOE did not object to the BOR's decision to retain the value of parcel 010-027175-00. Tan reiterated and expanded upon his prior testimony.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. However, "case law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn.. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[5] We begin our analysis with the sales of the subject properties. The record, i.e., property record cards or sale documents submitted at the BOR, contains evidence of the following sales: a $93,000 transfer of parcel 010-027175-00 from Federal Home Loan Mortgage Corporation (more commonly known as "Freddie Mac") in December 2014; a $24,500 transfer of parcel 010-048332-00 from CSMC Mortgage Backed Pass-Through Certificates Series 2007-3, US National Association as Trustee in December 2015; and a $24,250 transfer of parcel 010-112750-00 from Freddie Mac in May 2015. None of the parties dispute the minimal details of the subject sales. The BOE argued, however, that the sales of parcels 010-048332-00, and 010-112750-00 were distressed sales. In essence, the property owner counterargued that the sale of parcel 010-027175-00 was recent to the tax lien date and should be accepted as the best indication of the parcel's value.

[6] We are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), syllabus. Whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon

temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision* 117 Ohio St.3d 516, 2008-Ohio-1473, ¶35, (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 36, 44 (1997), overruled in part on other grounds (recency factors include "changes that have occurred in the market").

[7] As to parcel 010-027175-00, we agree that the $93,000 transfer in December 2014 was too remote to the tax lien date of January 1, 2017. The Supreme Court decision in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, is especially relevant to this matter. There, the court held:

> "[A] sale that occurred more than 24 months before the lien date and that is reflected in the property record maintained by the county auditor or fiscal officer should not be presumed to be recent when a different value has been determined for that lien date as part of the six-year reappraisal. Instead, the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." Id. at ¶26

[8] In this matter, the sale of December 2014 occurred more than 24 months before the tax lien date and the county auditor rejected such sale as he carried out his statutory duty to revalue real property in the county during the six-year reappraisal for tax year 2017. It was, therefore, incumbent upon the property owner to submit sufficient evidence to demonstrate that market conditions remained the same, or were otherwise in equilibrium, between the sale and tax lien dates. It failed to provide such evidence and, as a consequence, we must conclude that the $93,000 transfer of parcel 010-027175-00 in December 2014 is not reflective of the parcel's value as of tax lien date.

[9] As to parcels 010-048332-00 and 010-112750-00, we agree that the $24,500 transfer in December 2015 and the $25,250 transfer in May 2015 are reflective of the respective parcels' values. Though the BOE suggested that these sales were distressed sales that may have occurred at auctions, the record is devoid of any evidence to support such findings. See, R.C. 5713.04; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. It was the BOE's burden, as the opponent of the sales, to come forward with evidence to rebut them. See *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, at ¶12. The BOE failed to provide such evidence. "Mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2016-Ohio-1059, ¶15.

[10] In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that both the BOE, as to parcels 010-048332-00 and 010-112750-00, and property owner, as to parcel 010-027175-00, failed to satisfy their evidentiary burden on appeal. We find the BOR's decision to be well supported and affirm it.

[11] It is, therefore, the order of this board that the subject properties' values are as follows as of January 1, 2017:

PARCEL NUMBER 010-027175-00

TRUE VALUE: $152,000

TAXABLE VALUE: $53,200

PARCEL NUMBER 010-048332-00

TRUE VALUE: $24,500

TAXABLE VALUE: $8,580

PARCEL NUMBER 010-112750-00

TRUE VALUE: $25,300

TAXABLE VALUE: $8,860

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-253
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

EVINPROP
RICHARD EVANS, GENERAL MANAGING PARTNER
188 CAREN AVE.
COLUMBUS, OH 43085

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 010-076014-00 and 010-076850-00, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any properly-filed motions.

[2] The subject property, adjacent parcels that include two, four-unit apartment buildings and a single-family home, was initially assessed a combined true value of $285,600. (It appears that parcel 010-076014-00 was comprised of one, four-unit apartment building and parcel 010-076850-00 was comprised of one, four-unit apartment building and a single-family home.) The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced based upon a prior settlement agreement and the economically depressed area in which the subject property was located. The BOE filed a countercomplaint, which objected to the requests.

[3] At the BOR hearing on the matter, both the property owner and BOE appeared to submit argument and/or evidence in support of their respective positions. In the property owner's presentation, Richard and Charles Evans, partners in the property owner, appeared to testify in support of the complaint. Charles Evans asserted that the parties had entered into a settlement agreement in December 2016, which valued the subject property for the 2014 through 2016 triennial period, and argued that such value should carry forward into the new triennial period. He testified as to the character of the subject property, of the neighborhood in which it was located, and the rental income derived from the two apartment buildings. In support of the testimony presented, the property owner submitted a number of documents, which included comparable sales data, newspaper articles, photographs, and the settlement agreement dated December 2016. The BOE cross-examined him and objected to the comparable sales data as hearsay. In doing so, the BOE argued that the property owner had failed to provide sufficient evidence of the subject property's value.

[4] On February 23, 2018, the BOR held a decision hearing, at which the BOR members voted to reduce the subject property's value to $184,200. However, on February 27, 2018, the BOR reconvened the decision hearing, at which time it vacated its decision of February 23, 2018, because the decision was based upon erroneous calculations, and reopened the record. The BOR proceeded to vote to reduce the subject property's value to $241,700, by applying a gross rent multiplier ("GRM") of 60 to the $3,200 monthly rental income from the two apartment buildings ($192,000) and adding $49,000 for the single-family home. However, the BOR actually issued a written decision that reduced the subject property's value to $192,000, i.e., parcel 010-076014-00 was valued at $73,000 and parcel 010-076850-00 was valued $119,000. This appeal ensued.

[5] While this matter was pending for hearing, this board issued an order that concluded that Charles Evans had engaged in the unauthorized practice of law by engaging in motion practice and filing other documents on behalf of the property owner. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Interim Order, Oct. 22, 2018), BTA No. 2018-253, unreported. As a result, those filings were stricken and are not considered.

[6] At the hearing, both parties appeared to supplement the record with argument and/or evidence. In its presentation, the BOE argued that the property owner had not satisfied its burden before the BOR and that the BOR had improperly reduced the subject property's value based upon a GRM. Charles Evans essentially reiterated his testimony before the BOR.

[7] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Subsequent to this board's hearing, the BOE filed a motion contra to a previously-filed a motion for costs filed by Charles Evans on behalf of the property owner. In addition to the reasons stated in our order dated October 22, 2018 regarding Mr. Evans' unauthorized practice of law, the motion for costs is denied as this board lacks authority to sanction frivolous or bad faith conduct, outside the context of discovery. *Snodgrass v. Testa*, 145 Ohio St.3d 418, 2015-Ohio-5364. Compare *JMPCC 2006-LDP7 Centro Enfield, LLC v. Lorain Cty. Bd. of Revision* (Interim Order, April 23, 2018), BTA No. 2016-1340, unreported.

[8] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. However, "case law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn.. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine realproperty value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[9] We must first determine the sufficiency of the property owner's evidence, submitted at the BOR hearing. First, the property owner asserted that comparable sales data demonstrate that the subject property had been overvalued. We have repeatedly held that information of this type is an insufficient basis to determine real

property value because it fails to adequately to consider and to account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. Here, there was no attempt to adjust the properties to account for any differences with the subject property. See, generally, The Appraisal of Real Estate (13th Ed.2008). For example, the comparable sales include single-family homes located within the same general area (though not on the same busy street) as the subject property, which sold at various times in the latter part of 2017 (assuming the handwritten sales dates on the comparable sales are accurate). Charles Evans conceded that the subject property was unique given its two parcels that comprise two, four-unit apartment units and a single-family home. However, none of the alleged comparable sales were similar to the subject property, specifically, they do not include any apartment units and no attempt was made to relate the features of the comparable properties to the subject property's features and with the tax lien date of January 1, 2017. See *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."). See also *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative). We must, therefore, conclude that the unadjusted comparable sales data is not competent, credible, and probative evidence of the subject property's value.

[10] Second, the property owner submitted newspaper articles in support of its position. We do not find the newspaper articles to be competent, credible, or probative evidence of the subject property's value. Stories appearing in newspapers, magazines, or on the Internet which are submitted by a party in an effort to prove the truth or accuracy of a claimed condition or position, i.e., that the subject property was located in a "food desert" and in a high-crime area, while self-authenticating, see Evid.R. 902(6), constitute hearsay, and may be objected to by an opposing party, Evid.R. 802, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, and/or found not sufficiently reliable by the trier of fact. It is clear that the newspaper articles were clearly offered for the truth of the matter asserted, See, e.g., *Dellick v. Eaton Corp.*, 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). In this matter, none of the authors of the newspaper articles testified at any of the hearings. We must, therefore, conclude that the newspaper articles constitute unreliable hearsay, which are not competent, credible, and probative evidence of the subject property's value.

[11] Third, the property owner submitted photographs to demonstrate defects of the subject property, i.e., its location in an economically depressed and high crime area. The property owner failed to quantify how much the defects negatively impacted the subject property's value. For example, is the subject property's value diminished by $1,000 or $10,000 as the result of its location in a "food desert?" In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. *See Throckmorton v. Hamilton Cty. Bd. of Rev.*, 75 Ohio St.3d 227, 228, *** (1996) (stating '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.) *Gides*, supra, at ¶7. We must, therefore, conclude that the photographs are not competent, credible, and probative evidence of the subject property's value.

[12] Fourth, the property owner asserted that the parties' settlement agreement for the prior triennial period, tax years 2014, 2015, and 2016, should carry forward to the new triennial period, tax years 2017, 2018, and 2019. The Supreme Court has previously held that each tax year stands alone, and the fact that value may have been modified in another year is not competent and probative evidence that a different year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997). See also *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468.

[13] Based upon the foregoing, we conclude that the property owner failed to provide competent, credible, and probative evidence of the subject property's value.

[14] We now turn to the propriety of the BOR's decision to reduce the subject property's value to $192,000. As an initial matter, we are unable to affirm the BOR's written decision to value the subject property at $192,000 because it differed from the BOR's oral decision to value the subject property at $241,700, and, as a result, because the record is devoid of any basis for that decision. Furthermore, we are unable to affirm the BOR's oral decision to value the subject property at $241,700. As noted above, the BOR based its decision on applying a GRM of 60 to the $3,200 monthly rental income from the two apartment buildings ($192,000) and adding a value of $49,000 for the single-family home. We have no information regarding the selection of a GRM of 60 and how it is relevant to the two, four-unit apartment buildings situsedon the subject property. For example, why did the BOR choose a GRM of 60 instead of 50 or 70? The record is devoid of any information that identifies the different neighborhoods and that provides the underlying data and methodologies used to derive the GRM. The absence of such information in this case is especially problematic due to our inability to review the GRM analysis with respect to the properties utilized and their similarity to the subject property, including expense ratios and the basis for their reported rental income. The Appraisal of Real Estate (14th Ed.2013) explains that a GRM may be used to determine a property's value by comparing the income-producing characteristics of properties. It goes on to caution, however, that appraisers must be careful when attempting to employ this approach because, among other reasons, "[p]roperties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes." Id. at 507. See, e.g., *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845 (affirming this board's rejection of an effective gross income multiplier). As such, we are constrained to conclude that the BOR's oral decision is unsupported. We also note that the record is devoid of the basis to value the single-family home situsedon the subject property at $49,000.

[15] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude that the property owner failed to satisfy its burden to provide competent, credible, and probative evidence of the subject property's value before the BOR. We also conclude that the BOR's oral and written decisions are unsupported. Because of the insufficiency of the evidence in the record, we are constrained to reinstate the subject property's initially assessed value. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188 2013-Ohio-3028, ***, ¶ 35. Here, the BTA assigned a value that *** could be achieved only through artifice.") (Parallel citation omitted.)

[16] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER 010-076014-00

TRUE VALUE: $108,000

TAXABLE VALUE: $37,800

PARCEL NUMBER 010-076850-00

TRUE VALUE: $177,600

TAXABLE VALUE: $62,160

OHIO BOARD OF TAX APPEALS

JASON AUGENSTEIN, (et. al.),

Appellant(s),

vs.

CLARK COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1253

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AUG PROPERTY INVESTMENTS
Represented by:
JASON AUGENSTEIN
SOLE MEMBER
5000 HUNTER RD
ENON, OH 45323

For the Appellee(s) - CLARK COUNTY BOARD OF REVISION
Represented by:
WILLIAM D. HOFFMAN
ASSISTANT PROSECUTING ATTORNEY
CLARK COUNTY
50 EAST COLUMBIA STREET, SUITE 449
SPRINGFIELD, OH 45502

NORTHWESTERN CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] AUG Property Investments LLC ("AUG"), through its sole member, appeals a decision of the Clark County Board of Revision ("BOR") rejecting a request to reduce the value of the subject parcel from $613,040 to $350,000 for tax year 2017. The auditor and appellee school board filed written argument with this board. We have reviewed the notice of appeal, the transcript certified by the BOR, and the parties' written argument.

[2] The subject is approximately five acres improved with several multi-family homes. The county auditor valued the subject at $613,040 for tax year 2017. AUG purchased the subject at a sheriff's sale for $285,000 in August 2017. There have been no subsequent sales. AUG filed its decrease complaint seeking a value of $350,000. As justification, it wrote "[p]roperty was purchased about a year ago and bank had professional appraisal done and appraisal came in at about [$]290,000." There were no documents attached

to the complaint. The school board filed a counter complaint asking the BOR to affirm the auditor's valuation.

[3] The BOR scheduled a hearing, but AUG did not send a representative and no witnesses appeared in support of the complaint. In the notice of appeal to this board, AUG's owner states he was unable to attend the BOR hearing because he was out of town on business. Notably, the BOR granted AUG at least one prior continuance. BOR Hearing Notices at 4-7. The BOR ultimately affirmed the auditor's valuation with one BOR member orally noting the $285,000 sale was unreliable because it was a distressed sheriff's sale.

[4] AUG appealed to this board but did not request a hearing. Its notice of appeal, again written by AUG's owner, reads in part:

> "I do believe that if I was able to make the valuation hearing that the property value would have been significantly reduced. Enclosed is a bank appraisal from when I purchased the property back in 2017. I believe it to be a very accurate appraisal. Most of the units were vacant at the time 2 of the units had people renting the units.***We did invest around 50k into the property since our purchase.***Most of the work involved so far has been fairly cosmetic, from new paint, lighting, and flooring***Therefore I believe that an accurate tax appraisal should be in the 350k range."

AUG attached three finance appraisals to the notice of appeal.

[5] Before discussing our standard of review, we determine what evidence we are to review. There is some confusion about whether AUG submitted the three finance appraisals to the BOR and, thus, whether we can consider them. The school board's written argument states "while the property owner apparently presented excerpts of an appraisal to the [BOR], the appraiser did not testify." Appellee School Board Brief at 1. The auditor's written argument states "[a]n appraisal was submitted with the appeal to this" board, suggesting the appraisals were first filed with this board, rather than the BOR. We note the appraisals are not contained in the statutory transcript, which we presume is complete. AUG has not disputed the completeness of the statutory transcript; so, we must conclude the appraisals are not properly before this board. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[6] R.C. 5717.01 requires the BOR to "certify to the board of tax appeals a transcript of the proceedings" of the BOR and "all evidence offered in connection therewith." The transcript is "open for the parties to review and verify that all the evidence offered to the board of revision is included." *Columbus City Sch. Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Any party may object if the BOR has omitted evidence or other pertinent materials from the transcript. Id. Here, AUG has filed nothing with this board disputing the completeness of the BOR transcript. AUG did not invoke its right to a hearing before us to present new evidence, and we will not consider evidence submitted outside the BOR transcript when no hearing is requested before us. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported. We, therefore, find the appraisals are not properly before us.

[7] Even if the appraisals were properly before us, we would not find them competent and probative of value for several reasons. First, we generally reject an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Secondly, none of the appraisals opine the value of the

property as of the tax lien date. We have also generally rejected such appraisals in the past, and the Ohio Supreme Court has affirmed our rejections. For example, in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12, a property owner presented an appraisal opining the value of a parcel as of July 2010; however, the relevant tax lien date was January 1, 2013. We "refused to credit" the appraisal, and the Ohio Supreme Court affirmed our decision. Id. The court held "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶ 15, quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997).

[8] We recognize the Supreme Court has carved out an exception to the general rule that non-tax-lien dated appraisals are generally unreliable. See *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*"). In *Team Rentals*, the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the appraisal's proponent testified about why the appraisal was created and a party relied upon the appraisal in a business or financial transaction. Id. at ¶¶ 30-31. However, the Supreme Court clarified *Team Rentals* in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. In *Musto*, the court held this board could disregard an appraisal that had been relied upon in a financial or business transaction "in the absence of direct testimony about the preparation and actual use of" the appraisal. Id. at ¶ 42; *Ciccotti v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2018-352, unreported. Here, even if AUG had relied upon the appraisals, it provided no testimony to the BOR or us "about the preparation and actual use of" the appraisal. Musto, supra,at ¶ 42. The written statement in the notice of appeal does not cure this deficiency.

[9] Turning to the evidence in the statutory transcript, we find a lack of evidence to support AUG's proposed change in value. An appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish "competent and probative evidence" of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch*, supra, at ¶ 12, quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 23.

[10] AUG's decrease complaint does reference a sale, which is corroborated by the parcel card. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, a sheriff's sale, like the August 2017 sale of the subject property, is generally presumed not to be a voluntary, arm's-length transaction. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶ 2. AUG has submitted no evidence to rebut that presumption. We do not find the sale price competent and probative evidence of value.

[11] In sum, the appraisals are not properly before us, and the evidence of the August 2017 sale shows it was distressed. The only remaining pieces of evidence are the conclusory and unsupported statements in the decrease complaint, which are far from competent and probative evidence of value. Therefore, we find AUG has failed to prove the adjustment in value requested. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 050-02-00008-301-058

TRUE VALUE

$613,040

TAXABLE VALUE

$214,560

OHIO BOARD OF TAX APPEALS

LISA M. RUDOLPH, (et. al.),

Appellant(s),

vs.

CLERMONT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1034

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LISA M. RUDOLPH
Represented by:
GLENN P. RUDOLPH
4582 ENGLISH CREEK DRIVE
CINCINNATI, OH 45245

For the Appellee(s) - CLERMONT COUNTY BOARD OF REVISION
Represented by:
JASON A. FOUNTAIN
ASSISTANT PROSECUTING ATTORNEY
CLERMONT COUNTY
101 EAST MAIN STREET
BATAVIA, OH 45103

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner appeals to this board from a decision of the Clermont County Board of Revision ("BOR") determining the value of parcel number 41-56-12D-043 for tax year 2017. We consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, and the record of the hearing before this board ("H.R."), at which only appellant appeared. Although appellant argues that the county's valuation should be rejected due to its failure to timely certify the statutory transcript, we reject such argument, as this board has repeatedly rejected requests for default judgment. See, e.g., *Pugal v. Levin* (Interim Order, Dec. 16, 2008), BTA No. 2008-A-1280. It is this board's duty on appeal to independently determine value.

[2] The subject parcel consists of 3.904 acres of vacant land adjacent to a parcel improved with a single-family residence. Appellant describes the parcel as undeveloped, landlocked, and of such steep terrain that it is unbuildable. H.R. at 5. The county auditor initially valued the subject parcel at $15,800 for tax year 2017. Appellant filed a complaint seeking a decrease in value to $2,000, to reflect no change in value from prior years' valuations. Notably, 2017 was the year the auditor performed a triennial update of values in Clermont County.

[3] Appellant explained at the BOR hearing that the subject parcel was purchased in the same transaction as the adjacent parcel with the single-family residence. Appellant's counsel (spouse of the appellant property

owner) testified that they had no desire to purchase this additional parcel, but purchase of the adjacent

residence was made contingent on also buying this purportedly unusable parcel. S.T., Ex. E at 7-8. Appellant argued the value placed on the property by the auditor does not reflect its fair market value. He indicated a broker had previously valued the parcel at $3,904 for 2010. Id. at 4.

[4] Ben Campbell, a real estate analyst with the county auditor's office, agreed during the BOR hearing that the subject parcel is "unique property in its lack of usability." Id. at 15. However, he indicated the auditor's value was based on a comparison to a property, of similar topography and usability, that sold in June 2018 for $4,115 an acre. Id. at 15-16. Mr. Campbell testified that such value captures the contributory value of the parcel to its adjoining parcel, owned by the same person, just as the subject parcel contributes to the value of the adjacent parcel on which appellant's residence sits. In response, appellant's counsel testified that the buyers of the comparable property were effectively forced to buy the parcel, and that the sale did not occur on the open market. Id. at 16-19.

[5] After considering the evidence presented, the BOR voted to accept Mr. Campbell's recommendation to retain the auditor's initial valuation of $15,800.

[6] Appellant appealed to this board, again requesting a decrease in value to $2,000. Appellant's counsel reiterated the arguments he made previously to the BOR. He also indicated that condominiums were built on a separate parcel adjacent to the subject; because of the topography of a portion of that property, which is similar to the subject, the developer donated a portion to the township, indicating the lack of value in such land. H.R. at 7-8. Appellant also presented several spreadsheets, contained in a CD marked as Exhibit C, to demonstrate that the county had valued the subject parcel at $2,000. She points to Exhibit A, showing the parcel was valued at $2,000 for tax year 2016, and Exhibit B, showing that an influence factor of negative 95 was applied to the parcel for tax year 2016. Because there has been no change to the subject parcel since its prior valuation, in multiple years, for $2,000, appellant argues the 2017 value increase was unwarranted.

[7] As the appellant in this matter, the burden is on the owner "to demonstrate that the value [she advocates] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23. Even where a county has increased the value of a property and fails to provide a supporting rationale, an owner advocating a lower value must "furnish competent and probative evidence of her proposed value." *Jakobovitch*, supra, at ¶21.

[8] Here, the only evidence appellant provides in support of her requested decrease is the prior years' valuations. The Supreme Court has previously held that each tax year stands alone, and the fact that value has been modified in another year is not competent and probative evidence that a different year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997). While appellant notes that a prior decrease to $2,000 was based on an expert's valuation of the property at $3,904, no such expert opinion is in the record before us. We are therefore unable to independently evaluate such opinion to determine whether it is competent and probative of value.

[9] We also question the relevancy of an opinion of value so far removed from tax lien date. This board "must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." *Olmsted Falls*, supra, at 555. Without the ability to review the basis of the expert's opinion of value, we are unable to determine whether the opinion of value could be applied to tax lien date. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919, ¶18.

[10] Appellant argues that the owner's opinion of value is sufficient to reduce the value. Although an owner is certainly competent to testify about the value of property, see *Smith v. Padgett*, 32 Ohio St.3d 344, 347

(1987), such opinion must be supported by tangible evidence. See *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶21-23; *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996) ("there is no requirement that the finder of fact accept [the owner's value] as the true value of the property."). Appellant's opinion of value is based on a belief that the auditor's prior years' valuation should carry forward where nothing about the subject property has changed. S.T., Ex. F-4. As previously stated, we find no basis upon which to simply carry forward a prior year's value. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 152 Ohio St.3d 331, 2017-Ohio-8843, ¶19 (describing a request to reduce value based on an earlier year's reduction "an invitation to legal error, not an owner's opinion of value.").

[11] "Even if some evidence tends to negate the auditor's original valuation, it is proper to revert to that valuation when the BTA finds that the owner has not proved a lower value *and there is otherwise 'no evidence from which the BTA can independently determine value*.' (Emphasis added.) *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, ***." *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5708, ¶24. We do not question that the subject parcel is difficult to value at its true value in money, given its unique features. However, we find appellant has failed to meet her burden to prove a value different than that originally determined by the auditor for tax year 2017.

[12] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$15,800

TAXABLE VALUE

$5,530

OHIO BOARD OF TAX APPEALS

LESZEK & DANUTA ZAJAC, (et. al.),

Appellant(s),

vs.

DELAWARE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1007

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LESZEK & DANUTA ZAJAC
Represented by:
LESZEK ZAJAC
5560 OLENTANGY RIVER ROAD
DELAWARE , OH 43015

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants Leszek and Danuta Zajac appeal a decision of the Delaware County Board of Revision ("BOR"), which valued appellants' property at a combined $895,600 for tax year 2017. Appellants argue the appropriate value is $420,000. We now consider this matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the BOR, the exhibits presented at this board's hearing, and the transcript of that hearing ("H.R."). Because appellants have not provided probative and competent evidence in support of the reduction, we affirm the decision of the BOR.

Appellants' property consists of a house and surrounding acreage, most of which is farmland. S.T., Ex. E. at 3; H.R. at 6. The county auditor valued the parcel with the home at $602,200. The other two parcels were valued at a combined $365,600; however, the taxable value of those two parcels is less because both are enrolled in the current agricultural use value ("CAUV") program. At the BOR hearing, Mr. Zajac presented evidence of values of homes he purports are comparable to his home. S.T., Ex. F. It is unclear from the record whether he intended his evidence to apply to the CAUV property as well. Upon the recommendation of the county auditor's appraiser, the BOR reduced the value of the parcel with the home from $602,200 to $530,000. S.T., Ex. J. at 4. The appraiser used three recent sales and based his recommendation on the sales comparison approach to value. Id. at 4-6. The BOR retained the auditor's value on the other two parcels.

At this board's hearing, Mr. Zajac again submitted similar documents purporting to show the value of

comparable properties. H.R. at 8. He was, however, unable to articulate what criteria he or his realtor used when determining what they considered comparable property. Id. at 9-12. He did not submit an appraisal. Id. at 8.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). An appellant must furnish "competent and probative evidence" of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23). It is also our duty to "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. We independently determine value and need not rely on a BOR's reduced value. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"); see also *Smith v. Erie Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-466, unreported.

Having independently reviewed the record, we agree with the BOR that the parcel with the home should be valued at $530,000. See S.T., Ex. J. at 4. The county auditor's appraiser—Mark Heilman—conducted a sales comparison appraisal using three recent sales. He concluded the parcel should be valued at "$149.65 to $179.51 per square foot." Id. We agree the properties he used are comparable to appellants' property. For example, all four homes, appellants' home included, were built between 1999 and 2003. All four have a similar square footage, and all four are in the same taxing district. The first comparable sold for $149.65 per square foot, the second comparable sold for $156.95 per square foot, and the third comparable sold for $179.51 per square foot. Id. at 9-11. The auditor then adjusted the value of appellants' parcel using a rate of $150 per square foot. We find the BOR's decision to value the parcel with the home at $530,000 to be supported by the record.

We also find appellants have not met their burden in support of a decreased value on the other two parcels. They rely solely on print-outs describing nearby parcels that vary in size, condition, and characteristics from one another. We have rejected such evidence in the past unless an appellant provides other competent and probative evidence in support of the adjustment. *See, e.g., Sneary v. Allen Cty. Bd. of Revision* (Aug. 4, 2017), BTA No. 2016-1449, unreported. In *Sneary*, we said, "[t]o the extent the appellant argued that the disparity between the subject property's assessed value and neighboring properties' assessed values necessitates a reduction to the subject property's value, we must reject such argument." Id. The Ohio Supreme Court has likewise held that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). That is because "in the absence of an appraisal which analyzes such data *** the submission of raw sales information is normally considered insufficient to demonstrate value since the trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale *** may affect a valuation determination." *Western Reserve Ventures, LTD. v. Cuyahoga Cty. Bd. of Revision* (Aug. 10, 2017), BTA Nos. 2016-1351, 2016-1360, unreported (citing The Appraisal of Real Estate (14th Ed.2013)). In the absence of an appraisal analyzing appellants' property with the other properties, we find the evidence insufficient to justify a change in valuation.

It is the decision and order of this board that for tax year 2017, the properties shall be assessed in accordance with the following values:

PARCEL NUMBER 419-430-01-120-000

TRUE VALUE

$530,000

TAXABLE VALUE

$185,500

PARCEL NUMBER 419-430-01-119-000

TRUE VALUE

$190,700

TAXABLE VALUE

$66,750

PARCEL NUMBER 419-430-01-118-000

TRUE VALUE

$174,900

TAXABLE VALUE

$61,220

OHIO BOARD OF TAX APPEALS

CITY OF CLEVELAND, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-348

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CITY OF CLEVELAND
Represented by:
WILLIE AUSTIN
PRESIDENT, CEO
4800 PAYNE AVENUE
CLEVELAND, OH 44103

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered following an order by this board to the parties to show cause why it should not be dismissed for lack of jurisdiction. As explained in our November 19, 2018, order, the underlying complaint in this matter requested a decrease in the value of parcel number 108-12-001 for tax year 2017; however, it appears the parcel was not on the tax list for tax year 2017. None of the parties responded to this board's order.

A board of revision lacks jurisdiction over a complaint against the value of a parcel that was not on the tax list for the year complained of. As the Second District Court of Appeals explained in held in *Kuntz 2016, L.L.C. v. Montgomery Cty. Auditor*, 2nd Dist. Montgomery No. 28038, 2018-Ohio-4635, the board of revision "only has jurisdiction to hear complaints regarding real property that appears on the tax list and duplicate." Id. at ¶19. The property record card certified as part of the statutory transcript indicates the

subject parcel was exempt as "muni-owned prop" for tax year 2017. The subject parcel was not on the tax list, and, therefore, the complaint was not proper under R.C. 5715.19(A).

Based upon the foregoing, we hereby remand this matter to the Cuyahoga County Board of Revision with instructions to vacate its decision finding value for the subject property, and to dismiss the underlying complaint for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

HILLIARD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-301
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - HILLIARD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

GHULAM RABI DADA
5697 DORSEY DRIVE
COLUMBUS, OH 43235

Entered Monday, March 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Hilliard City Schools Board of Education ("BOE") appeals to this board from a decision of the Franklin County Board of Revision ("BOR"). In its decision, the BOR reduced the values of two parcels, i.e., parcel numbers 560-220400-00 and 560-220401-00, for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the county auditor, and the record of the hearing before this board.

The subject parcels are two halves of a two-family home. The county auditor initially assessed each parcel at a value of $143,000. Property owner Ghulam Rabi Dada filed a complaint against the valuation, seeking a decrease in the value of each parcel to $90,000, based on the sales of two similar properties on the same street in 2017 for $93,900 and $94,900. The BOE filed a countercomplaint requesting that the auditor's values be maintained. At the BOR hearing, Mr. Dada testified that the subject property is in its original condition, and that the only improvement made since his purchase of the property in 2014 was to the roof. When questioned about the two comparable sales cited on his compliant, Mr. Dada was unaware of their

circumstances or the interior conditions of the properties; however, he indicated their exteriors appear to be in better condition than the subject.

The BOR considered the owner's comparable sales, but ultimately rejected them as probative of value because both properties sold encumbered by long-term leases. Instead, the BOR gathered its own comparable sales data from the subject's subdivision and included the MLS listings for each comparable property in the statutory transcript. In its decision recording, the BOR indicated it based its decision to reduce the value of the subject parcels to $118,000 each on its analysis of an adjusted comparable sales range of $115,000 to $118,000. Although it mentioned an analysis based on a gross rent multiplier, there is no indication from the recording that such an analysis was the basis for its decision.

The BOE then appealed to this board. At this board's hearing, counsel for the BOE argued that the BOR relied on unadjusted comparable sales, and that such reliance is improper. Mr. Dada again argued that the subject parcels are overvalued compared to sales on the same street, and that significant renovations would need to be made to bring the property to the value assessed by the auditor.

This board's duty on appeal is to independently weigh the evidence in the record, according no presumption of validity to the BOR's value. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. In doing so, we note that the auditor's initial valuation, not the BOR's valuation, is the default if this board finds that the BOR's decision is not supported by the record. Compare *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶6.

The best indication of a property's value for real property tax purposes is a recent, arm's-length sale of the property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The property record card, and Mr. Dada's testimony, indicate that Mr. Dada purchased the subject property (both parcels) in April 2014 for $149,000. Such sale occurred more than twenty-four months prior to tax lien date. Although the sale was reflected on the auditor's records when Franklin County conducted its sexennial reappraisal of properties in 2017, the auditor rejected the sale in favor of a different value. In such a case, the sale is presumed not to be recent to tax lien date. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26. The burden falls to the proponent of the sale price to demonstrate that market conditions have not changed between the date of sale and the tax lien date. As the only evidence provided by Mr. Dada consists of sales that occurred *after* tax lien date, we find he failed to meet his burden to demonstrate that his 2014 purchase of the subject property is recent to tax lien date 2017.

The BOR indicated in its decision recording that its decision to reduce the subject property's value was based on its analysis of comparable sales. Though the BOR indicated it rejected the owner's comparable sales as being subject to long-leases, we are unable to confirm such fact. We find insufficient information about the sales themselves that would allow us to determine whether the sales were arm's-length and whether the properties are truly comparable to the subject. Turning to the BOR's comparable sales, we are similarly limited in our ability to review the circumstances of the sales and their comparability to the subject property. Although the BOR indicated it based its decision on an adjusted range of sales, we are unable to discern what adjustments were made to the comparable sales and the basis for any such adjustments. The only notations on the MLS listings included in the transcript are "superior" for 4853 Briston Drive (due to the "many updates" indicated on the listing), and "encumbered w/ leases" for 3887 Heatherglen Drive. S.T. at Ex. F. The amount or degree of any adjustments are not specified, nor did any member of the BOR or any consultant or staff appraiser testify about such adjustments. In the absence of such information, we are unable to replicate the BOR's value and find the record insufficient to support the BOR's reduction. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35.

When "the board of revision orders a reduction and the board of education appeals to the BTA, the board of

revision as an appellee can be called upon to account for the manner in which it determined the reduced value." *Columbus City Schools*, supra, at ¶10. Here, the county appellees have not participated on appeal, either by appearing at this board's hearing or by submitting written legal argument. In the absence of additional information about how and to what extent the BOR adjusted its comparable sales, we conclude that there is insufficient evidence to support the BOR's reduction in value.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were are previously determined by the auditor, as follows:

PARCEL NUMBER 560-220400-00

TRUE VALUE

$143,000

TAXABLE VALUE

$50,050

PARCEL NUMBER 560-220401-00

TRUE VALUE

$143,000

TAXABLE VALUE

$50,050

OHIO BOARD OF TAX APPEALS

REGINALD L. & LYNETTE STOVER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1559 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REGINALD L. & LYNETTE STOVER
OWNERS
37356 CHERRYBANK DRIVE
SOLON, OH 44139

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, March 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon appellants' notice of appeal, purportedly from a decision regarding their application for remission of a real property tax late payment penalty for the second half of 2017. However, upon review of the record, there is no indication that the application was filed with the county treasurer nor that any decision was issued by either the county fiscal officer or the board of revision.

In the absence of a decision from the Cuyahoga County Board of Revision on appellants' application, this board is without jurisdiction over this matter. R.C. 5703.02 grants this board the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 provides that an appeal "may be taken to the board of tax appeals within thirty days *after notice of the decision* of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board. *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

Upon consideration of the record before us, we find this appeal to be premature. Accordingly, this board lacks jurisdiction and the matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BRETT REID, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1277 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRETT REID
OWNER, REAL ESTATE AGENT
BERKSHIRE HATHAWAYHOMESERVICES KATHY REID REALTY
13036 WEST POINT DRIVE
MANTUA, OH 44255

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
MARRETT HANNA
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

HUDSON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

Entered Monday, March 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals to this board from a decision of the Summit County Board of Revision ("BOR") determining the value of parcel number 30-02079 for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the record of the hearing before this board, and any written argument submitted by the parties.

The subject property is improved with a four-unit apartment building and was initially assessed by the county fiscal officer at $180,000 for tax year 2017. We note that 2017 was the year of a triennial update of values in Summit County. R.C. 5715.33. Appellant filed a complaint against the valuation, seeking a decrease in value to $100,000, arguing that the building is wrongly classified as commercial and that the comparables used by the county fiscal officer were not truly comparable. At the BOR hearing, appellant argued that the subject property is not valued uniformly with other properties in the city of Hudson where it

is located, and submitted numerous purportedly comparable properties' values in support. He also indicated that he had consulted with an appraiser who confirmed that the subject property is incorrectly classified as commercial, and should be classified as residential. In response to appellant's arguments, a member of the BOR explained that the current valuation of the property, i.e., $180,000, is based on an appraisal provided by appellant in a tax year 2015 valuation proceeding. Although the Board of Education of the Hudson City School District ("BOE") filed a countercomplaint in support of maintaining the fiscal officer's initial value, it provided no independent evidence of value.

After considering the evidence, the BOR determined that no change in value was warranted based on a lack of sufficient evidence. It further determined that the subject property was correctly classified as a commercial property, because it contained more than three units.

Appellant thereafter appealed to this board and reiterated the arguments he had presented to the BOR regarding the classification of the property and the uniform valuation of properties in the county. Neither the BOE nor the county appellees participated at this board's hearing, though the county appellees submitted written argument in lieu of appearance.

As the appellants in this matter, the burden is on the owner "to demonstrate that the value [he advocates] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

At the outset, we address appellant's argument that the county fiscal officer has failed to uniformly value real property in the county. As the Supreme Court stated in *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 413 (1964), "[t]axation by uniform rule within the requirement of [Section 2, Article XII of the Ohio Constitution] requires uniformity in the mode of assessment." "Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). Appellant has made no argument that the methodology used to value the subject property is different than that utilized to value other properties in the county.

Instead, appellant points to the values of other properties and the amount at which those values have increased over time and compared such increases (or decreases) to the value of the subject property over time. We must initially acknowledge the fallacy of reliance upon other properties' assessed values, since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Appellant presented tables showing increases in value from 2008 to 2011, and 2011 to 2014 for 232 homes; however, it is unclear how such information relates to the valuation of the subject property. Further, many factors could affect how a particular property's value might increase or decrease over time, including a recent, arm's-length sale of the property, changing market conditions, and changes in the condition of the property itself. It is likewise unclear the methodology by which appellant is comparing the subject's purported increase in value to other properties. As one BOR member noted during the hearing, appellant purchased the subject property for $182,000 in December 2003. As of the tax lien date in question, the property was valued at $180,000 – a decrease of $2,000 over the fourteen year period, despite appellant's statement during the BOR hearing that the value increased by 88%.

Rather than rely on the values of other properties, appellant's burden of proof on appeal is to demonstrate a value different than the county fiscal officer's valuation. *Jakobovitch*, supra, at ¶12. Although an expert appraisal is often provided to meet the burden of proof, an expert appraisal is not required in every case. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶12. An owner of property is competent to testify as to the market value of his property by virtue of his ownership. *Smith v. Padgett*, 32

Ohio St.3d 344, 347 (1987). In addition, appellant indicated he has education and experience as a realtor that lend him additional expertise in valuing property. H.R. at 22-23. See The Appraisal of Real Estate (13th Ed.2008) 8 (explaining difference between real estate salespeople and appraisers). However, this board must determine the credibility and probative value of such opinion. *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶23.

Here, appellant appears to opine that the value of the subject property should be the same as the neighboring property. It appears his request for a value of $100,000 is based on the fiscal officer's valuation of a similar, though renovated, four-unit building next to the subject; however, we again acknowledge the problem with relying on the fiscal officer's valuation in a proceeding challenging the valuation of the subject. Further, although appellant anecdotally indicated that the neighboring property was updated on the exterior and interior, and superior to the subject property, he presented no evidence of the interior condition of the property. Without sufficient information about the property's condition, we are unable to determine whether the properties are truly comparable and the amount of any adjustments that might need to be made to make the properties comparable, even if we were to rely on their respective valuations. He has presented no sales comparison approach, using recent, arm's-length sales and adjusting such sales for differences from the subject property, nor any income approach to value relying on market income and expenses for a rental property like the subject. In the absence of any such data and accompanying analysis, we find he has failed to present a reliable opinion of value for the subject property.

To the extent appellant argues that the defects of the subject property, i.e., needed repairs to the roof, driveway, sidewalks, etc., necessitate a reduction in value, we reject such argument. As the Supreme Court stated in *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, "[a]s a general matter, '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.' *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 288, *** (1996)." (Parallel citation omitted.) Id. at ¶27. As this board has repeatedly stated, a party must do more than simply demonstrate the existence of negative factors; it must also demonstrate the impact such factors have on the property's value. In the absence of an appraisal quantifying the effect of any negative factors on the value of the property, we find appellant's evidence insufficient to support a reduction in value.

Finally, we find appellant has failed to meet his burden to prove that the fiscal officer incorrectly classified the subject property as commercial, rather than residential. A complaint filed with a board of revision under R.C. 5715.19 may challenge the fiscal officer's classification of property under R.C. 5713.041 "according to its principal, current use." Pursuant to Ohio Adm. Code 5703-25-10, the county fiscal officer "shall classify each parcel of taxable real property in the county into one of the following classifications, which are: (1) Residential and agricultural land and improvements; (2) All other taxable land and improvements, including commercial, industrial, mineral and public utility land and improvements." That section further defines "residential land and improvements" as "[t]he land and improvements to the land used and occupied by one, two, or three families." Ohio Adm. Code 5703-25-10(B)(5). There is no dispute that the subject property is a four-unit residential property, nor that its principal use is as anything other than a four-unit residential property. It therefore does not meet the definition of "residential land and improvements" and was properly classified by the fiscal officer. Compare *Roth v. Erie Cty. Bd. of Revision* (May 19, 2009), BTA No. 2007-A-1104, unreported (property used as a family's home and incidentally as a bed and breakfast was properly classified as residential rather than commercial). The zoning applicable to the property has no bearing on such classification. We further note that Ohio Adm. Code 5703-25-10(E) further provides that "Nothing contained in this rule however, shall cause the valuation of any parcel of real property to be other than its true value in money or be construed as an authorization for any parcel of real property in any class in any county to be valued for tax purposes at any other value than its 'taxable value' as set out in rule 5703-25-05 of the Administrative Code."

Based upon the foregoing, we find appellant has failed to meet his burden on appeal with regard to the valuation of the subject property and its classification. It is therefore the order of this board that the BOR's

determination as to the subject property's classification is affirmed, and that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$180,000

TAXABLE VALUE

$63,000

OHIO BOARD OF TAX APPEALS

TIMOTHY KLING, (et. al.), Appellant(s), vs. MEDINA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1160 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TIMOTHY KLING
CO-TRUSTEE
7111 CHATHAM RD
MEDINA, OH 44256

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
72 PUBLIC SQUARE
MEDINA, OH 44256

Entered Monday, March 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals to this board from a decision of the Medina County Board of Revision ("BOR") determining the current agricultural use valuation ("CAUV") status of parcel number 020-10A-34-026 for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the county auditor pursuant to R.C. 5717.01, the record of the hearing before this board, and the county appellees' written argument. Although the county appellees, in a motion in limine, objected to appellant's presentation of testimony and evidence at this board's hearing, the objections are hereby overruled, as the evidence presented was largely duplicative of the evidence previously presented at the BOR hearing.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2000).

The subject parcel consists of 6.318 acres and is improved with a single-family residence. In prior tax years, the parcel, and an adjacent parcel (parcel number 020-10A-34-027) enjoyed CAUV status, allowing valuation at current agricultural use value rather than market value. As the Supreme Court recently explained in *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390:

"Typically, real property is valued by the county auditor at its 'true value in money,' R.C.

> 5713.01(B), which 'refers to "the amount for which that property would sell on the open market by a willing seller to a willing buyer ***, *i.e.*, the sales price." ' (Ellipsis sic.) ***
>
> "In 1974, however, the General Assembly enacted the CAUV statute, R.C. 5713.03 et seq., which permits owners of land that is devoted exclusively to agricultural use to request the auditor to value the property in accordance with its current agricultural use rather than its true market value. ***
>
> "CAUV is a preferred tax status because, in general, a value determined by agricultural use is lower than a property's true market value and, therefore, CAUV status typically results in a lower real-property tax liability. *** Land must qualify to be valued at its agricultural use, and if a CAUV parcel, or any portion thereof, is converted to another use or no longer satisfies the CAUV requirements, it is removed from CAUV status and returned to the tax rolls to be assessed at its true market value, and the county recoups the prior three years of the tax savings realized by the taxpayer. R.C. 5713.34." (Internal citations omitted.) Id. at ¶10-12.

R.C. 5713.30(A) defines "land devoted exclusively to agricultural use" differently for tracts of different size. For tracts of ten acres or more, the land must, during the year of the CAUV application and three years prior, be "devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture ***, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers ***." R.C. 5713.30(A)(1). For tracts of less than ten acres, the statute imposes an additional requirement, i.e., that the commercial agricultural activities must produce an average yearly gross income of at least twenty-five hundred dollars during the three-year period prior to the year of application. R.C. 5713.30(A)(2).

In 2017, the county auditor removed the subject parcel and the adjacent parcel from the CAUV program after a "CAUV audit," finding insufficient information about the commercial agricultural production occurring on the property. Appellant filed a complaint against the removal, and associated recoupment of the prior three years' savings. He argued that he is not required to provide proof of a specific income from agricultural production on the property because the total tract, i.e., both parcels, consists of more than ten acres. At the BOR hearing, appellant testified that the subject parcel is used as pasture for neighbors' horses for a "nominal fee," that he sells fish raised in the pond on the parcel, and that hay is cut off the parcel. He indicated that sometimes payment is made through bartering transactions. Appellant also presented the testimony of Tim Witkowski, who farms the parcel adjacent to the subject pursuant to a lease.

While the BOR returned parcel number 020-10A-34-027 to the CAUV program for tax year 2017, it declined to do so for the subject parcel (020-10A-34-026), finding no documentation showing any income earned from use of that parcel.

Appellant thereafter appealed to this board. At this board's hearing, he testified that the subject parcel contains an approximately one-acre pond in which he raises fish stock for sale. He presented the testimony of a customer, Lynda Bowers, confirming the fish production. He further indicated that the remaining portions of the subject parcel, apart from the homesite, are used as pasture for horses. The adjacent parcel was planted in soybeans and winter wheat in prior years, though appellant indicated that drainage issues prevented soybeans from being planted in 2017. Appellant argues that the county is improperly requiring him to comply with the requirement in R.C. 5713.30(A)(2) that a CAUV applicant provide proof of at least $2,500 in income for a tract of less than 10 acres by considering the parcels separately.

At the outset, we agree with appellant that the two parcels under common ownership, i.e., parcel numbers 020-10A-34-026 and 020-10A-34-027, should be considered together for purposes of determining whether their use meets the definition of "land devoted exclusively to agricultural use" under R.C. 5713.30. For purposes of CAUV, the definition of "tracts, lots, or parcels" includes all portions of land under common ownership and ignores the boundaries of numbered parcels. *Maralgate, L.L.C. v. Greene Cty. Bd. of Revision*, 130 Ohio St.3d 316, 2011-Ohio-5448. See also *Consolidated Investors Group 11, LLC v. Lorain*

Cty. Bd. of Revision (July 30, 2015), BTA No. 2014-4109, unreported. Excluding the one-acre homesite on the subject parcel, the entire tract consists of 11.608 acres of land sought to be valued under CAUV. Accordingly, the tract must meet the requirements for CAUV under R.C. 5713.30(A)(1), rather than R.C. 5713.30(A)(2), and appellant need not meet the additional income criteria. We therefore must determine whether the 11.608 acre tract satisfies the statutory requirement that it be "devoted exclusively to agricultural use" under R.C. 5713.30(A)(1).

In *Chrisman v. Licking Cty. Bd. of Revision* (Sept. 19, 1986), BTA No. 1985-C-753, unreported, this board held that the word "exclusively" should be construed to mean "primarily" to determine whether a property is "land devoted exclusively to agricultural use." We must therefore determine whether the subject tract, including both contiguous parcels, is used primarily for agricultural use.

It is clear, and undisputed, that the majority of the tract is used for commercial agriculture production, as soybeans and wheat have been continuously cultivated there pursuant to a lease between appellant and farmer Tim Witkowski. We find evidence of agricultural use of the remaining acreage of the tract, including appellant's aquaculture and use of the property to pasture various livestock. Most notably, there is no evidence in the record that the property has been converted to any other use. See *Altair Realty Ltd. v. Delaware Cty. Bd. of Revision* (Aug. 8, 2016), BTA Nos. 2015-1489, 1491, unreported; *Marlagate*, supra. We therefore find the entire tract, including the subject parcel and adjacent parcel 020-10A-34-027, meet the requirements for CAUV.

Based upon the foregoing, it is the decision of this board that the decision of the Medina County Board of Revision with respect to parcel number 020-10A-34-026 is hereby reversed, and the parcel should valued at its current agricultural use for tax year 2017.

OHIO BOARD OF TAX APPEALS

RALPH HAMMER, (et. al.),

Appellant(s),

vs.

OTTAWA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1154

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RALPH HAMMER
OWNER
2097 WINDSOR PL
FINDLAY, OH 45840

For the Appellee(s) - OTTAWA COUNTY BOARD OF REVISION
Represented by:
JAMES VANEERTEN
OTTAWA COUNTY PROSECUTING ATTORNEY
OTTAWA COUNTY
315 MADISON ST., 2ND FLR
PORT CLINTON, OH 43452

PORT CLINTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, March 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Ralph Hammer appeals a decision of the Ottawa County Board of Revision ("BOR"), which increased the value of the subject parcel pursuant to a complaint by the Board of Education for the Port Clinton City School District ("BOE"). We consider this appeal upon the notice of appeal and the transcript certified by the BOR. No party filed written argument with this board, and the BOE has not participated on appeal.

Appellant purchased two adjacent parcels, one being the subject parcel, in August 2016 for $292,500. See Conveyance Form at 1. Appellant purchased the other from the executor of an estate in an arm's-length transaction. The BOE filed an increase complaint asking the BOR to adopt the sale price. Appellant appeared at the BOR hearing and testified about the condition of the property. While appellant protested the BOE's complaint, he did not dispute the arm's-length nature of the sale. Appellant spent most of his argument time questioning the BOE's counsel about the purpose of the complaint. The BOR agreed with the BOE that the sale price is the best evide of the property's value, and allocated a value of $120,000 to the subject parcel.

Appellant's notice of appeal to this board states he believes the true value is $45,000. However, he did not file written argument or explain on the notice of appeal why the true value should be $45,000. It does not appear appellant wants to retain the original auditor's valuation of $71,820. He instead proposes an even lower value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). In order to meet that burden, an appellant must furnish "competent and probative evidence" of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. The Supreme Court has held, "when the proponent of a sale price furnishes facially qualifying evidence of the sale *** it becomes the opponent's burden on rebuttal to disprove the sale's presumptive recency." *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of the sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the *** arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet the initial burden with purchase documents. See *Lunn* at ¶15 (no additional testimony is generally necessary). The opposing party must then, to succeed, rebut the presumption created by the sale. *Lone* Star, supra,at ¶ 19.

In this case, the BOE submitted the conveyance statement and the deed. We find the BOE furnished "facially qualifying evidence of a sale." Id. Accordingly, the burden shifts to appellant to rebut the sale presumption. However, we find the record lacks any competent and probative evidence rebutting the sale. Appellant argued to the BOR that he overpaid for the property, but that conclusory statement is unsupported by any extrinsic evidence. He also argued to the BOR that the sale price was not the best evidence of value. However, an arm's-length sale is the best evidence as a matter of law. See *Terraza* 8, supra,at ¶ 6.

Therefore, we find the BOR correctly adopted the sale price. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 0131460119653001

TRUE VALUE

$120,000

TAXABLE VALUE

$42,000

OHIO BOARD OF TAX APPEALS

JOHN STADLER, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-881

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN STADLER
P. O. BOX 62064
CINCINNATI, OH 45262

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, March 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner John Stadler appeals a decision of the Hamilton County Board of Revision ("BOR"). Mr. Stadler sought a reduction in valuation on a single parcel from $59,470 to $35,000 for tax year 2017. We now consider this appeal upon the notice of appeal, the transcripts certified by the BOR, and the hearing transcript of this board's proceeding. For the following reasons, we affirm the BOR.

[2] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). In order to meet that burden, an appellant must furnish "competent and probative evidence" of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶¶ 15, 22. We will not rely on a BOR's determination if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[3] Mr. Stadler made two general arguments to the BOR and now to us. First, he says the property is overvalued because of habitual flooding, which has damaged the home. Second, he argues the property is overvalued compared to similar homes nearby.

[4] The BOR found the flooding argument insufficient to justify a reduced valuation, as do we. We have

previously held flooding alone does not justify a reduction unless a party can quantify how the floodingwill decrease the property's value. See *Janson v. Lake Cty. Bd. of Revision* (July 7, 1995), BTA No.1994-S-711, unreported, at 11. Conclusory statements about needed repairs are likewise insufficient. As the Supreme Court stated in *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996), "[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value." A party must do more than simply demonstrate the existence of negative factors; it must also quantitatively demonstrate the impact such factors have on the property's value. *Germano v. Cuyahoga Cty. Bd. of Revision* (June 19, 2018), BTA No. 2017-1468, unreported. In the absence of an appraisal quantifying the effect of any negative factors on the value of the property, we find Mr. Stadler's evidence insufficient to support a reduction in value. We note, as did the BOR, that Mr. Stadler still rents the property to tenants for approximately $900 per month despite the property's infirmities.

[5] Mr. Stadler's second argument deals with the value of comparable properties. At the BOR hearing, Mr. Stadler presented a number of print-outs showing sales of nearby parcels. The BOR correctly noted, however, that nearly all were HUD or sheriff's sales, which we must presume are distressed. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶ 2 ("taxing authorities to presume that an auction sale price is not a voluntary, arm's-length transaction"). We have repeatedly said unadjusted comparable sales data is generally insufficient to warrant an adjustment. In *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, we said "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find" unadjusted comparable sales helpful and "does not accord them much weight." When a party gives us nothing more than a list of raw sales data we are "left to speculate as to how differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. *Wearn v. Cuyahoga Cty. Bd. of Revision* (May 22, 2018), BTA No. 2017-1159, unreported (citing generally The Appraisal of Real Estate (13th Ed.2008)). In the absence of an appraisal, we find Mr. Stadler's additional comparable sales evidence insufficient to support a further reduction in value.

[6] Having reviewed the record, we agree the BOR came to the correct value. The BOR granted a partial reduction to $42,000 per the auditor's recommendation. The BOR's value is specifically supported by the report of appraiser Matthew Lemle. Mr. Lemle reviewed the relevant market prices and determined the appropriate valuation range based on square footage. We find the evidence relied upon by the BOR justifies the reduction to $42,500 but no further. The BOR's value is consistent with the auditor's valuation of several nearby parcels, e.g., 5100071012600 ($42,000), 5100071019500 ($45,000), and 5100071010400 ($45,230).

[7] It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 510-0071-0152

TRUE VALUE

$42,500

TAXABLE VALUE

$14,880

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1413
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

CIOTOLA FAMILY LIMITED PARTNERSHIP II
10803 BUCKINGHAM PL.
POWELL, OH 43065

Entered Monday, March 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The South-Western City Schools Board of Education appeals a decision of the Franklin County Board of Revision ("BOR"), which valued the subject property at $93,300 for tax year 2016. The school board, citing a June 2016 sale, argues the appropriate value is $140,000. We now consider this matter upon the notice of appeal, the statutory transcript certified by the BOR ("S.T."), the school board's exhibits, and the transcript of the hearing before this board ("H.R.").

The subject property consists of two adjacent parcels, 140-003938-00 and 140-000570-00. On June 9, 2016, appellee Ciotola Family Limited Partnership II ("Ciotola") purchased the subject property for $140,000. H.R., Ex. 1. The county's parcel card also shows the sale price was $140,000. The sellers were Joseph Del Ciello, Patricia Del Ciello, and a bankruptcy trustee. Id. The sellers transferred the property using two deeds. S.T., Ex. F. The first deed transferred the bankruptcy trustee's interest to Ciotola, and the second deed transferred Joseph and Patricia Del Ciello's interest to Ciotola. Both deeds were signed on June 9, 2016 and recorded on June 30, 2016. Joseph and Patricia Del Ciello's spouses signed dower

releases, which were likewise recorded. The title company filed two conveyance fee statements, one for each deed. The first statement, for the bankruptcy trustee's deed, listed $46,666 as consideration paid. The second statement, for the Del Ciellos' deed, listed $93,334 as consideration paid.

Since the county auditor valued the subject property at $35,600 for tax year 2016, the school board filed an increase complaint asking the BOR to adopt the sale price. S.T., Ex. A. At the BOR hearing, the school board relied upon the deeds and conveyance fee statements to support its valuation request. Ciotola did not send a representative to the BOR hearing. The BOR orally noted Ciotola submitted no evidence disputing the sale was arm's-length. The auditor's representative orally "recommend[ed] accepting the sale price *** as the new and fair market value for tax year 2016." The treasurer's representative agreed. However, when the BOR issued its written decision, the decision stated a value of $93,300. S.T. at 34. The school board believes the discrepancy occurred from a mere processing error. The BOR, according to the school board, caught the first conveyance statement for $93,334 but overlooked the second conveyance statement for $46,666. H.R. at 5. The school board appealed to us, but the BOR did not attend our hearing or file argument indicating whether it agreed or disagreed with the school board's hypothesis.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We do not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"); see also *Smith v. Erie Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-466, unreported.

An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. The presumption remains even when the sale postdates the tax-lien date. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of the sale price bears "a relatively light burden and need not 'definitive[ly] show *** that no evidence controvert[s] the *** arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet the initial burden with sale documents. Id. at ¶15 (no additional testimony is generally necessary). The opposing party must then, to succeed, rebut the presumption created by the sale. *Lone* Star, supra,at ¶ 19.

In this case, the school board met its initial burden of proving a facially valid sale with the deeds and conveyance fee statements. See *Lone Star* at ¶ 19; H.R., Ex. 1. Accordingly, the burden shifts to any opponent to rebut the sale. However, no party has submitted evidence in rebuttal, and we found none during our independent review of the record. Therefore, we find the sale price is the best indication of value.

It is the decision and order of this board that for tax year 2016, the properties shall be assessed in accordance with the following values:

PARCEL NUMBER 140-003938-00

TRUE VALUE

$32,200

TAXABLE VALUE

$11,270

PARCEL NUMBER 140-000570-00

TRUE VALUE

$107,800

TAXABLE VALUE

$37,730

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-278, 2017-279, 2017-280, 2017-293, 2017-295, 2017-296, 2017-297, 2017-298 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

JDM II SF NATIONAL, LLC AND LSERF2 TRACTOR REO (DIRECT), LLC
Represented by:
EDWARD J. BERNERT
BAKER HOSTETLER
200 CIVIC CENTER DRIVE
SUITE 1200
COLUMBUS, OH 43215

Entered Monday, March 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") and former and current property owners appeal decisions of the board of revision ("BOR"), which determined the value of the subject property, parcel 010-254100-00, for tax years 2013, 2014, and 2015. We proceed to consider this matter based upon the notices of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject property, a corporate campus, was initially assessed at $18,540,000 for tax year 2013. The BOE filed a complaint, which requested that the subject property's value be increased to reflect the

$25,092,400 price at which it purportedly sold in November 2013. The property owner at that time, LSREF2 Tractor REO ("LSREF2") filed a countercomplaint, which objected to the request. While the matter was pending, the county auditor conducted the triennial update of real property values and assessed the subject property at $17,088,600 for tax year 2014. Both the BOE and property owner at that time, JDM II SF National, LLC ("JDM"), filed complaints with the BOR, which requested that the subject property be revalued. The BOE requested that the subject property's value be increased to reflect the $26,100,000 price at which it purportedly sold in April 2014; JDM requested that the subject property's value be decreased to $12,075,510. Apparent from the records, the BOR held these matters in abeyance, for a time, to await a decision from the Supreme Court in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578, (*"State Farm I"*) which involved the same parties, property, and sales, for tax years 2011 and 2012.

The BOR held a consolidated hearing on the matters at which time both the BOE and property owners appeared through counsel. In its presentation, the BOE submitted sale documents, which memorialized a $25,092,326 transfer of the subject property from State Farm Mutual Automobile Insurance Company ("State Farm") to LSREF2 in November 2013 and a $26,100,000 transfer of the subject property from LSREF2 to JDM in March 2014; a decision from this board, which evaluated the two sales for tax years 2011 and 2012, *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Dec. 3, 2015), BTA No. 2014-3918, unreported, reversed by *State Farm I*; and a memorandum from the Department of Taxation about its interpretation of amended R.C. 5713.03. Based upon its presentation, the BOE requested that the subject property be valued consistent with the sale closest to any of the applicable tax lien dates.

In its presentation, the property owners presented the testimony of Tom O'Malley, chief operating officer and general counsel of JDM Partners, an entity affiliated with JDM. He explained that JDM's purchase of the subject property in March 2014 was part of larger sale, which included other properties owned by State Farm. Appraisers Bruce Pickering and, primarily, Ronald M. Eberly testified consistent with the appraisal report they authored, which valued the subject property at $14,900,000 as of January 1, 2013 and $13,000,000 as of January 1, 2014. The property owners requested that the subject property be valued consistent with the Pickering-Eberly appraisal report.

The BOR issued separate decisions for each year at issue: as to tax year 2013, the BOR valued the subject property at $18,540,000 consistent with county auditor's initial assessment; as to tax year 2014, the BOR valued the subject property at $25,092,400 consistent with the sale of November 2013; and as to tax year 2015, the BOR valued the subject property at $26,100,000 consistent with the sale of March/April 2014. The BOE and property owners appealed all the BOR's decisions to this board. We consolidated these matters at the BOE's unopposed request.

At the merit hearing before this board, both the BOE and property owners appeared through counsel to submit additional argument and evidence into the record. In their presentation, the property owners submitted additional testimony from O'Malley and Eberly. O'Malley reiterated and expanded upon his prior testimony about the facts and circumstances of JDM's $26,100,000 purchase of the subject property from LSREF2 in March 2014. Eberly testified about the underlying data and methodologies used to derive opinions of the subject property's value for tax years 2013 and 2014, consistent with the previously submitted appraisal report, and value for tax year 2015, consistent with a newly submitted appraisal report that valued the subject property at $13,200,000. Eberly also testified that the appraisal reports were substantially similar. However, he noted that the value conclusion for tax year 2013 included excess land, which did not apply to the value conclusions for tax years 2014 and 2015, and that the appraisal report for tax year 2015 included an additional comparable property, under the sales comparison approach. As additional support for its arguments, the property owners submitted a binder full of documents, which included a purchase agreement for the $25,092,400 sale between State Farm and LSREF2 in November 2013, a lease agreement between State Farm and LSREF2, and an assignment of the purchase and lease

agreements from LSREF2 to JDM. The BOE cross-examined O'Malley and Eberly. Based upon its presentation, the property owners requested that the subject property be valued consistent with the Pickering-Eberly appraisal reports for tax years 2013, 2014, and 2015.

In its presentation, the BOE submitted the testimony of appraiser Thomas D. Sprout, who was scoped to review the Pickering-Eberly appraisal reports, as well as an appraisal report performed contemporaneous with the March/April 2014 sale by Cushman & Wakefield. Over the property owners' continuing objection, Sprout testified about the strengths and weaknesses of the appraisal reports. He was cross-examined about the scope of his assignment and the data and methodologies used to derive his conclusions. The BOE submitted sale documents and the Cushman & Wakefield appraisal report and proffered a list of other triple-net properties that were leased, or available to lease, in the market. Based upon its presentation, the BOE requested that the subject property be valued consistent with the $26,100,000 sale of March/April 2014 for tax years 2013, 2014, and 2015.

The property owners recalled Eberly to testify about the selection of comparable properties under the sales comparison approach and the impropriety of developing an income approach when valuing the fee simple interest. On cross examination, he conceded that he did not determine market rent in the analysis to determine the subject property's value.

Subsequent to this board's merit hearing, the parties submitted written argument to more fully assert their respective positions. In their written argument, the property owners asserted that they had successfully demonstrated that the $26,100,000 sale of March/April 2014 was not indicative of the subject property's value and argued that the subject property should be valued consistent with the Pickering-Eberly appraisal reports. They also requested that Sprout's testimony be stricken from the record for a number of reasons. In its written argument, the BOE asserted that the property owners had failed to demonstrate that the $26,100,000 sale of March/April 2014 was not indicative of the subject property's value and argued that they had failed to demonstrate that the sale price was influenced by the underlying lease in place at the time of the sale.

Before we consider the merits of this appeal, we must first dispose of several preliminary issues. First, the BOR failed to submit the evidence submitted by the BOE, i.e., certified copies of the sale documents at the BOR hearing. We *again* remind the BOR that parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The Supreme Court has noted that "[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revision should take care to comply with the statutory duty to certify the *entire* record." (Emphasis sic.) *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶27, fn.4. See, also *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St. 3d 129, 2016-Ohio-1094, ¶19. Therefore, the BOR should take care to ensure its evidentiary record is accurate. The BOE submitted the missing sale documents at this board's hearing.

Second, the property owners strongly objected to Sprout's testimony, insisting that he was required to submit a written appraisal report to support his oral testimony, and that his failure to submit a written appraisal report violated professional standards and was unfair to the property owners. As a result, the property owners requested that Sprout's testimony be stricken from the record. These objections are overruled. See, The Appraisal of Real Estate (14th Ed.2013) 671-682; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 499, 2016-Ohio-7466, at ¶26 ("[W]e have already rejected the assertion that the USPAP imposes legally binding limitations on the evidence that may be considered by the tax tribunals when valuing real property for tax purposes. *See Lowe's Home Ctrs., Inc. v. Wash. Cty. Bd. of Revision*, 145 Ohio St.3d 375, 2016-Ohio-372, ***, ¶ 27 ('The bare fact of such violations [of USPAP] does not by itself make it unlawful to adopt a particular appraisal,' though such violations 'could be found to affect the credibility of the appraisal under all the circumstances of the case')." (Parallel citation omitted.)). We find nothing improper about Sprout's appraisal review testimony. Though the

property owners strongly argued that the BOE could not meet its burden through Sprout's appraisal review testimony, the Supreme Court has determined otherwise. *Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 421, 2015-Ohio-4522, at ¶ 21 ("Even if a board of education elects not to commission its own appraisal, it might in a proper case offer a different type of evidence: an expert review of the owner's appraisal. Here, the school board claims that the owner's appraisal is deeply flawed. Under such circumstances, the school board could hire an expert to perform an 'appraisal review' to highlight the errors."). Furthermore, though the property owners were advised, at this board's hearing, to file the appropriate motion to obtain a copy of Sprout's work file, no such motion (or subpoena) was filed.

Third, there were a number of deferred objections at the merit hearing. The BOE objected to the submission of Exhibit F, the assignment of purchase agreement, and argued that such document is not a full and complete copy of the parties' agreement. The objection is overruled and the board will accord the document its due weight, if any. The property owner objected to Sprout's testimony about the Cushman & Wakefield appraisal report because it had not been authenticated by its author. This objection is overruled. See *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865 (a hearsay appraisal report, performed contemporaneous with a sale, may be used to demonstrate that such sale reflected fair market value). The property owners also objected to a list of other triple-net properties that were leased, or available to lease, in the market, submitted by the BOE and marked as Exhibit 4. The objection is overruled.

Fourth, upon the BOE's motion, this board's attorney examiner ordered the separation of witnesses, Eberly, before Sprout began his testimony, to which the property owners vehemently objected. It is important to note that the property owners did not request separation of the witnesses before commencing their case in chief. As an administrative entity, the Ohio Rules of Evidence do not strictly apply to our proceedings, yet they may serve to guide our hearings and determinations. See, e.g., *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 415 (1996); *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 450 (1997). In relevant part, Evidence Rule 615 provides "[e]xcept as provided in division (B) of this rule, at the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses *** An order directing the 'exclusion' or 'separation' of witnesses or the like, in general terms without specification of other or additional limitations, is effective only to require the exclusion of witnesses from the hearing during the testimony of other witnesses." After reviewing the exceptions in division (B), we find that no exception to the rule applies to this matter. To the extent that the property owners argue that Eberly's presence during Sprout's examination was essential to the property owners' cause, pursuant to Evid. Rule 615(B)(3), we disagree. It should be noted that the property owners' representative, O'Malley, remained in the hearing room during Sprout's testimony.

We proceed to consider the merits of this appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977), at paragraph one of the syllabus. The affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997); *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415.

We begin our analysis with the $25,092,400 sale of the subject property in November 2013. Though this sale is closest to the tax lien dates of January 1, 2013 and January 1, 2014, see, *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, ¶20, we do not find this sale to be reflective of the subject property's value. In *State Farm I*, the Supreme Court determined that this specific sale was not indicative of the subject property's value because such sale was "a sale/leaseback[, which] does not qualify as an arm's-length transaction ***." *State Farm I*, supra, at ¶28.

We next consider the $26,100,000 sale of the subject property in March/April 2014. The presentation of the sale documents, by the BOE, created a rebuttable presumption that this sale was a recent, arm's-length transfer indicative of the subject property's value. *Bronx Park S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*, 153 Ohio St.3d 550, 2018-Ohio-1589, at ¶13 ("[T]his appeal presents a straightforward application of *Terraza*: the July 2014 sale presumptively represents the value of the unencumbered fee-simple estate, but the BTA must also weigh Bronx Park's appraisal evidence."). See also *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The property owners did not challenge the arm's-length character or recency of the sale of March/April 2014. Instead, they argued that $26,100,000 purchase price reflected the value of the lease to State Farm, which was in effect at the time of the sale. We proceed, therefore, to evaluate the sufficiency of the property owners' evidence.

The property owners argued that the sale in March/April 2014 should be disregarded because JDM was motivated to purchase the subject property based upon the income stream derived from leasing it to State Farm. In support of that argument, the property owners submitted the testimony from Raymond Templet, Jr., from *State Farm I*, and O'Malley in this matter. All buyers and sellers have subjective motives in any transaction. We find that consideration of the income stream derived from leasing real property is not an impermissible motivation. Nothing in the record indicates that consideration of the income stream was atypical of market participants interested in purchasing real property subject to triple net leases. Furthermore, Ohio Adm. Code 5703-25-07(D)(2) specifically authorizes consideration of market rent, i.e., income stream, to determine real property value. To the extent that the property owners argued that the March/April 2014 sale must be disregarded outright because the subject property was subject to a lease at the time of such sale, the Supreme Court has already considered and rejected that argument. See *Terraza, supra*.

We proceed to consider the Pickering-Eberly appraisal reports. In both appraisal reports, the appraisers solely developed the sales comparison and cost approaches to valuing real property. They first determined that the subject property's highest and best use, as improved, was as "a single occupant / owner-user facility." Hearing Record ("H.R.") at Exhibit ("Ex.") G at 27; H.R. at Ex. H at 26. See also H.R. at Ex. G and H at 1 ("Continued owner-user/single-user use as an operations center or headquarters facility."). Under the sales comparison approach to value, the appraisers compared the subject property's features to the features of five or six other single-user properties located throughout Ohio, to conclude to an indicated value of $14,600,000 as of January 1, 2013; $12,700,000 as of January 1, 2014; and $13,000,000 as of January 1, 2015. Under the cost approach, the appraisers determined a vacant land value, to which they added the relevant costs to replace buildings situsued on the subject property, to conclude to an indicated value of $15,400,000 as of January 1, 2013; $13,700,000 as of January 1, 2014; and $13,500,000 as of January 1, 2015. The appraisers noted that they did not develop the income approach to valuing real property because there were no income and expense history and because the $25,092,400 sale in November 2013 really was a financing mechanism, not a true sale. The appraisers reconciled the indicated values to finally conclude the subject property's value to be $14,900,000 as of January 1, 2013; $13,000,000 as of January 1, 2014; and $13,200,000 as of January 1, 2015.

We next consider Sprout's appraisal review. He testified that the Pickering-Eberly appraisal reports lacked credibility because the income approach was not developed although sufficient market information existed to provide an opinion of value under such approach. He also faulted the appraisers for distinguishing between the fee simple interest and the "leased fee" interest without first determining whether the underlying lease in this matter was at, above, or below market rents. Sprout further asserted that given the age of the improvements, at least twelve years old on the various tax lien dates, it was inappropriate for the appraisers to develop the cost approach to value the subject property.

Upon review, we find nothing in the Pickering-Eberly appraisal reports to rebut the $26,100,000 sale of

March/April 2014. As an initial matter, we note that in *Terraza*, the court noted that "[m]arket rent becomes relevant only if an opponent presents it as evidence in an attempt to rebut a sale price." The property owners, in this matter, did not provide evidence of market rents. Neither the appraisers' testimony (Pickering and Eberly) nor their appraisal reports asserted or supported that the lease in place at the time of the sale of March/April 2014 was above market rents. In fact, at this board's hearing, Eberly testified that the appraisers did not determine market rents. H.R. at 150. A review of the record fails to highlight any other evidence, submitted by the property owners, that provides information about market rents. As a result, we cannot independently determine whether the lease in place at the time of the March/April 2014 exceeded market rents. Therefore, under *Terraza*, we find that the $26,100,000 sale of March/April 2014 is the best indication of the subject property's value.

We proceed, however, to continue our analysis of the Pickering-Eberly appraisal reports. We have two major issues of concern with the appraisal reports and the appraisers' testimony. First, we find the appraisers' analyses inconsistent with their conclusion of highest and best use as "single tenant/owner-user" and, therefore, incomplete. Based upon the common understanding of "/" (a "slash" or "virgule"), the subject property's highest and best use, according to the appraisal report, was for a single occupant, i.e., a tenant *or* an owner-user. A review of the appraisal reports and the appraisers' testimony indicates that they only focused on the "owner-user" aspect of their highest and best use conclusion and failed to consider that a non-owner tenant might occupy the subject property. A review of the appraisers' testimony indicates that they consistently referred to an "owner-user" (or similar verbiage) during the discussion of their analyses. For example, the appraisal reports provide market information for an owner-user under the sales comparison approach but fail to provide market information for a single occupant, tenant under the income approach. Because a property occupied by a single tenant, non-owner contemplates rental payments to the owner, "we question why the appraiser did not also employ an income approach to value, considering the subjects are income producing properties." *DeOliveira v. Cuyahoga Cty. Bd. of Revision* (Sept. 5, 2017), BTA Nos. 2016-1134 et seq., unreported, at 2. We acknowledge that the appraisers determined that an income approach to value was inappropriate, in part, because there was no "income and expense history." However, a specific property's income and expense history should only be used if such information conforms to market income and expenses and, as previously noted, the appraisers did not determine market income and expenses. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). Moreover, we agree with Sprout that there was sufficient market income and expense information available such that the appraisers could have developed an income approach relevant to the subject property.

Second, we fundamentally disagree with the appraisers' selection of mostly vacant, comparable properties under the sales comparison approach. A review of the appraisers' testimony highlights a belief that appraising the fee-simple interest requires the use of vacant properties. Although we acknowledge that each of the property owners have given up the right to occupy the property, i.e., the subject property is encumbered by a lease, in exchange for rental payments, such right is only one of the bundle of rights of fee simple ownership. The court has recognized "'[a] 'fee simple' may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple. Black's Law Dictionary (8th Ed.2004) 648-649." *Meijer Stores Ltd. Partnership v. Franklin County Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, at ¶23, fn. 4. In so doing, in *Meijer*, the court stated:

> "[T]he possibility of encumbering a property like the one at issue here constitutes – as a purely factual matter – one method of realizing the value of legal ownership of the property. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, *** ¶27 ('encumbering property typically represents an owner's attempt to realize the full value of the property ***.')." (Parallel citation omitted.) Id. at ¶ 23.

A review of the court's decision in *Terraza* suggests that the court has not strayed from that reasoning. Accord *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018- Ohio-4370, ¶¶26-28.

Furthermore, though the property owners argued that the underlying lease reflected the value of State Farm's credit rating, it failed to substantiate such claim. The property owners failed to provide competent, credible, and probative evidence to demonstrate State Farm's credit rating and how such rating operates in the relevant market. "Mere speculation is not evidence*." Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, ¶15.

Third, we also must conclude that the development of the cost approach, in the Pickering-Eberly appraisal reports, is not competent, credible, or probative. See, also, *Sears Roebuck & Co. v. Franklin Cty. Bd. of Revision* (July 14, 2006), BTA No. 2004-R-86, unreported, at 15-16 ("The cost approach is most appropriately used in valuing property that has been recently completed. The Appraisal of Real Estate (12th Ed), at 354. The older the property, the more speculative the value derived using the cost approach due to the subjectivity of determining the property's depreciation."). As noted above, the buildings situsued on the subject property were at least twelve years old on the tax lien dates, which makes the cost approach highly speculative. Though we recognize that the appraisers utilized the comparable sales to determine a "baseline curve for depreciation purposes," we do not find such analysis to be persuasive. H.R. 53.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owners failed to rebut the presumptions accorded to the March/April 2014 sale. Though they argued that the Pickering-Eberly appraisal reports were sufficient to demonstrate that the subject sale was not the best indication of value, we disagree. As the Supreme Court has noted, "[a]n appraiser's opinion of value is not enough on its own to overcome the validity of a sale price. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, ¶ 20. We must conclude that the BOE satisfied its evidentiary burden on appeal.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2013, January 1, 2014, and January 1, 2015:

TRUE VALUE

$26,100,000

TAXABLE VALUE

$9,135,000

OHIO BOARD OF TAX APPEALS

JAMES AND MARGARET ANN GIBSON, (et. al.),	CASE NO(S). 2018-1954
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JAMES AND MARGARET ANN GIBSON
Represented by:
JAMES GIBSON
4020 CHAGRIN RIVER ROAD
MORELAND HILLS, OH 44022

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, March 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the

existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HAWTHORNE PARK BED AND BREAKFAST, (et. al.),	CASE NO(S). 2018-1950
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - HAWTHORNE PARK BED AND BREAKFAST
Represented by:
RONALD HENTSCH
1616 HAWTHORNE PARK
COLUMBUS , OH 43203

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Tuesday, March 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On November 13, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property by the Franklin County Board of Revision ("BOR").

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOEL PETKOVICH, (et. al.),

Appellant(s),

vs.

PORTAGE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-231

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOEL PETKOVICH
Represented by:
JOEL PETKVICH
OWNER
766 MURRAY AVE.
RAVENNA, OH 44266

For the Appellee(s) - PORTAGE COUNTY BOARD OF REVISION
Represented by:
ALLISON BLAKEMORE MANAYAN
ASSISTANT PROSECUTING ATTORNEY
PORTAGE COUNTY
241 SOUTH CHESTNUT STREET
RAVENNA, OH 44266

Entered Friday, March 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Portage County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On February 6, 2018, the appellant filed a notice of appeal with this board. The notice of appeal did not indicate that the BOR had issued a decision, nor did appellant attach a copy of a BOR decision. The county appellees argue that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

QINGSHAN TAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-82

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - QINGSHAN TAN
Represented by:
QUINGSHAN TAN
6720 RIDGECLIFF DRIVE
SOLON, OH 44139

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, March 21, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have

jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CITY OF CINCINNATI, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1629

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CITY OF CINCINNATI
Represented by:
PAUL M. JONES, JR.
PAUL JONES LAW, LLC
435 EAST MAIN STREET
SUITE 220
GREENWOOD, IN 46143

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID C. DIMUZIO
ATTORNEY AT LAW
DAVID C. DIMUZIO, INC.
810 SYCAMORE STREET, SIXTH FLOOR
CINCINNATI, OH 45202

Entered Monday, March 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county auditor's and appellee board of education's ("BOE") joint motion to dismiss the underlying complaint, and the parties' respective responses thereto.

The underlying complaint in this matter, against the tax year 2017 valuation of parcel numbers 013-0003-0006-00, 015-0001-0006-00, 010-0004-0B02-00, and 013-0003-0A06-00, was filed by counsel. On the face of the complaint, the owner of the property is correctly identified as the City of Cincinnati and the complainant is identified by reference to attached materials, i.e., "see attached." Notably, the attached

documents are not included in the document labeled Complaint by the county in its statutory transcript; however, documents titled "evidence presented_own" indicate that the complaint was filed by BB Aviation, the tenant of the property. At the BOR hearing, complainant's counsel made clear that he filed the complaint on behalf of BB Aviation, which, he indicated, has the liability to pay the real estate taxes under the lease. Counsel for the BOE objected to complainant's standing. The BOR nonetheless proceeded on the merits of the complaint and issued decisions finding no changes in value were warranted for any of the subject parcels.

In their motion to dismiss, the appellees argue that a lessee does not have independent standing to complain against the value of real property under R.C. 5715.19. We agree. The Supreme Court has recently reiterated that a tenant has no standing independent from its landlord to challenge the valuation of real property. *Beavercreek Towne Station, L.L.C. v. Greene Cty. Bd. of Revision*, 154 Ohio St.3d 274, 2018-Ohio-4300, ¶20. Tenants are not identified in R.C. 5715.19(A) as among those who may complain against the valuation of property. While the court also held that a tenant may file as the *agent* of an owner, with the assistance of counsel, id. at ¶22-23, complainant's counsel made clear during the BOR hearing that the complaint was filed on behalf of the tenant, not as an agent of the owner. A tenant's contractual responsibility for paying the real estate taxes has no impact on the standing of a tenant to file a complaint. *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141 Ohio St.3d 149, 2014-Ohio-5030, ¶13 ("the statute furnishes no basis for concluding that the existence of a contractual obligation to pay property taxes confers standing on a party who is not the owner."). We note that no provision of the lease authorizes the filing of complaints against the valuation of the leased property.

Appellant argues in response to the motion that the same counsel who filed the original complaint was authorized by the owner (the City of Cincinnati) to file the present appeal, and attached the professional services agreement between counsel and the City as evidence of such authorization. However, such agreement is dated February 2019, well after the complaint was filed in April 2018. We do not find the agreement evidences any authorization from the City to the tenant to file the complaint.

Based upon the foregoing, we agree that the complainant lacked standing to file the underlying complaint, and, therefore, the complaint failed to properly invoke the jurisdiction of the Hamilton County Board of Revision. The appellees' motion is therefore well taken and this matter is hereby remanded to the Hamilton County Board of Revision with instructions to vacate its decisions and dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

XIANG LIU, (et. al.),

Appellant(s),

vs.

DELAWARE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1517

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - XIANG LIU
52 BEECH RIDGE DRIVE
POWELL, OH 43065

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

Entered Tuesday, March 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered by this board upon a notice of appeal from the appellant property owner from a decision of the Delaware County Board of Revision ("BOR"). We proceed to decide the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, and the record of the hearing before this board.

The property owner appeals a decision of the BOR regarding the value of parcel number 319-425-12-068-000, which is improved with a single-family home, for tax year 2017. The owner filed a complaint against the auditor's initial valuation of the parcel at $393,000, seeking a decrease to $337,490 based on a comparison of the subject property's value to neighboring properties' values. At the BOR hearing, owner Xiang Liu amended her requested value to $341,908. She testified that a realtor provided her with comparable sales, and presented those in support of her request. She specifically noted the sale of 225 Glen Village, which sold for $455,000 in 2017, but which is valued lower than the subject property. She also argued that the subject property's land value is disproportionately higher than other properties' land values in the neighborhood. After considering the evidence presented, the BOR determined that the subject's "land value seems higher than other lots in the area," and found a slight decrease in the land value was warranted. The BOR issued a decision decreasing the total value of the parcel to $386,200.

Appellant thereafter appealed to this board. At this board's hearing, Ms. Liu advocated for a further decrease in value based on comparison to the values of other properties in the subject's immediate neighborhood and comparable sales. She also provided an analysis of the changes in values for the homes

in the subject's neighborhood, asserting that the subject property had increased at a disproportionately higher rate, particularly as to land value.

As the appellant in this matter, the burden is on the owner "to demonstrate that the value [she advocates] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. Even where a board of revision has revised an auditor's initial valuation, this board must independently determine value, giving no presumption of validity to the board of revision's determination. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. See also *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384; *Vandalia-Butler City Schools v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078.

At the outset, we acknowledge that appellant purchased the subject property in October 2015 for $432,000. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11 (the factors attending whether a sale price establishes value is determined de novo by this board). Although not discussed during the BOR proceedings, included in the statutory transcript is a recommendation to the BOR for no change in value from appraiser Mark Heilman. Mr. Heilman comments in the written recommendation that the sale was a "recent valid sale." S.T., Ex. J. Attached to the recommendation is a copy of the MLS listing for the subject from 2015, indicating it was initially listed for $450,000 and sold to appellant after being listed for 14 days. Based on the limited information in the record, it appears the sale was arm's-length.

A recent, arm's-length sale is the best evidence of a property's true value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415; *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. Given that the sale occurred approximately fourteen months prior to tax lien date, we presume the sale is recent. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. We look to the evidence in the record to determine whether market conditions have changed between the date of sale and tax lien date, so as to render the sale remote and therefore no longer indicative of value.

While appellant presented the BOR and this board with some information regarding sales of other properties in the subject property's neighborhood, we are unable to rely on such data to find that her October 2015 purchase is no longer indicative of value. Most notably, the sales occurred *after* tax lien date; they are therefore not indicative of any change in the market between the date of appellant's purchase (October 2015) and tax lien date (January 1, 2017). Further, the information provided gives no indication of whether the purportedly comparable sales were arm's-length in nature. We find insufficient evidence to rebut the presumption that the October 2015 sale is recent to tax year 2017.

The remaining evidence in the record consists of comparisons of the subject property's valuation (and taxes assessed) to the valuations of other properties in the neighborhood. "Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See also *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979). We find the evidence of other properties' values, and the amounts by which they have changed over time, is not probative of the subject property's value.

Based upon the foregoing, it is the decision of this board that the best evidence of the subject property's value as of tax lien date is appellant's recent, arm's-length purchase of the property for $432,000 in October 2015. It is therefore the order of this board that the true and taxable values of the property as of January 1, 2017, were as follows:

TRUE VALUE

$432,000

TAXABLE VALUE

$151,200

OHIO BOARD OF TAX APPEALS

KEVIN ROBITAILLE, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1295

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KEVIN ROBITAILLE
OWNER
8360 LAIDBROOD PLACE
NEW ALBANY, OH 43054

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Tuesday, March 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner Kevin Robitaille appeals to this board from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel 170-003999-00 for tax year 2017. Mr. Robitaille did not request a hearing before this board, and no party filed written argument. See Ohio Adm.Code 5717-1-17(A). We, therefore, consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified by the auditor.

[2] Mr. Robitaille purchased the subject in April 2016 for $574,770 from commercial developer M/I Homes ("M/I"). S.T., Ex. C. The subject is 0.37 acres of land improved with a residence built in 2015. The auditor valued the subject at $521,200 for tax year 2017, and Mr. Robitaille filed a decrease complaint requesting a value of $395,000.

[3] The BOR held a hearing, which Mr. Robitaille attended. Mr. Robitaille argued the subject was overvalued compared to other nearby properties. He stated his belief that nearby "identical" homes were valued lower than the subject. The BOR noted the April 2016 sale, and it questioned Mr. Robitaille about the details of the sale. Mr. Robitaille testified he purchased the home on the open market from M/I, he had no prior relationship with M/I, and he paid the price advertised by M/I. In rebuttal, Mr. Robitaille voiced his belief he overpaid for the subject but offered little explanation why he believed he overpaid.

[4] Mr. Robitaille did not obtain an appraisal. In fact, he testified the subject has never (to his knowledge) been appraised; however, he did mortgage the subject property making it conceivable a finance appraisal

was conducted at some point. Mr. Robitaille neither testified there were negative characteristics or structural issues with the residence nor did he allege there were any significant post-sale changes to the subject rendering the sale price unreliable. Mr. Robitaille also presented several photographs of the subject and the surrounding area.

[5] When it rendered a decision, the BOR did not adopt the sale price or the value proposed by Mr. Robitaille. The BOR instead defaulted to the auditor's value of $521,200. The BOR orally stated it believed Mr. Robitaille was "more concerned about taxes and tax rates" than value. The BOR also orally said that, while it recognized the recent sale, it felt it "best" to retain the auditor's value. Mr. Robitaille appealed to this board.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶¶ 15, 22. We will not rely on a BOR's determination if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it.").

[7] Because this case implicates a sale, we begin with the relevant law for recent, arm's-length sales. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1988). A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." *Terraza 8*, supra, at ¶ 33. While the Supreme Court has rejected a bright-line recency rule, it has said a sale less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588; *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. When a facially valid sale is present, any party disputing the sale price bears the burden of rebuttal.

[8] Here, we find the April 2016 sale is the best evidence of value. See *Terraza* 8, supra,at ¶ 31. The sale occurred approximately eight months prior to the relevant tax-lien date, January 1, 2017, and the evidence in this case shows the sale from M/I to Mr. Robitaille was arm's-length. Mr. Robitaille confirmed at the BOR hearing that he purchased the property on the open market for a price advertised by M/I. Even if it was not openly marketed, "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶20. Mr. Robitaille testified he had no preexisting relationship with M/I and was not under duress to purchase the subject. His testimony, the decrease complaint, and the county parcel card all confirm the sale price was $574,770. Accordingly, the April 2016 is a facially qualifying sale, which shifts the burden to any opponent of the sale price.

[9] Having reviewed the record independently, we can find no competent and probative evidence that the sale price does not accurately represent the value of the subject. Again, Mr. Robitaille bears the burden of rebutting the sale price. Mr. Robitaille simply argued to the BOR that he 1) paid too much for the subject and 2) had discovered nearby "identical" homes were valued less than the subject.

[10] We do not find Mr. Robitaille's conclusory and unsupported statement that he overpaid sufficient to rebut the sale. The record is unclear whether Mr. Robitaille objectively overpaid for the subject, and we cannot rely upon an uncorroborated, self-serving statement without "reliable tangible evidence." *Helfrich v. Licking Cty. Bd. of Revision* (Nov. 3, 2017), BTA No. 2016-1079, unreported. Additionally, we "will not disregard a sale

simply because a party may have gotten a bad deal and potentially overpaid for a property." *Dwyer v. Hamilton Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2018-461, unreported. Mr. Robitaille testified he purchased the home from a commercial developer, on the open market, and agreed to pay the advertised price of his own volition. See *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA No. 1997-M-262, unreported. It also appears there were few or no unknown adverse characteristics. Mr. Robitaille testified there were no aesthetic or structural issues with the subject, and the photographs he submitted do not clearly show any obvious structural problems with the home. See S.T., Ex. E. This board also notes Mr. Robitaille did not substantiate his argument with a formal appraisal.

[11] His argument about the auditor's valuation of nearby parcels likewise fails in the absence of an appraisal. To begin, we note, as did the BOR, that the neighboring homes are not in fact "identical" and cannot be compared with the subject absent an appraisal. There are several differences between the subject and the two purported comparables. Only one of the two are on the same street. The dwellings vary as do the lot acreage. One abuts woods while the subject is next to a small pond. Furthermore, we have rejected raw market data in the past unless an appellant provides other competent and probative evidence in support of the adjustment. See, e.g., *Sneary v. Allen Cty. Bd. of Revision* (Aug. 4, 2017), BTA No. 2016-1449,unreported, where we said, "[t]o the extent the appellant argued that the disparity between the subject property's assessed value and neighboring properties' assessed values necessitates a reduction to the subject property's value, we must reject such argument." The Ohio Supreme Court has likewise held that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). That is because "in the absence of an appraisal which analyzes such data *** the submission of raw sales information is normally considered insufficient to demonstrate value since the trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale *** may affect a valuation determination." *Western Reserve Ventures, LTD. v. Cuyahoga Cty. Bd. of Revision* (Aug. 10, 2017), BTA Nos. 2016-1351, 2016-1360, unreported (citing The Appraisal of Real Estate (14th Ed.2013)).

[12] We acknowledge our decision to value the subject in accordance with the sale price differs from the BOR's decision. While it acknowledged the sale, the BOR disregarded it without legal justification. The Supreme Court has held this board must independently review the evidence and may not merely affirm an unsupported BOR valuation. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35. We find the BOR's decision is not supported by the record, and we reject its valuation. We instead order the property to be assessed in accordance with the facially valid, and unrebutted, sale price.

[13] It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 170-003999-00

TRUE VALUE

$574,770

TAXABLE VALUE

$201,170

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-459
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

MELVIN G. LITTON
927 FAIRWAY BLVD.
COLUMBUS, OH 43213

Entered Tuesday, March 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 010-080650-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board. We note that although the BOR convened a hearing at which both the BOE and appellee property owner appeared, the BOR has indicated to this board that no audio recording of the hearing is available due to a technical oversight. As such, we are unable to consider such evidence in our determination.

The subject property is improved with a four-unit apartment building, which the auditor initially assessed at a total true value of $107,000. The property owner filed a complaint with the BOR seeking a reduction in value to $52,861. The BOE filed a countercomplaint in support of the auditor's initial value. A hearing was convened before the BOR, though no record of the hearing or subsequent decision hearing was provided to this board. Based on the hearing notes, it appears that both the BOE and property owner were present, and

the owner submitted evidence regarding his purchase of the subject property and the sales of two nearby properties. The BOR issued a decision reducing the initially assessed valuation to $33,500, though the basis of the reduction is unclear. From this decision, the BOE filed the present appeal. This board convened a hearing, at which the BOE argued that the BOR's reduction was not supported by competent and probative evidence, and the auditor's value should, therefore, be reinstated. The property owner asserted that the primary issue reducing the value of the subject property is its location in a high-crime neighborhood and testified regarding his April 2014 purchase of the property for $16,000, adding that he made some minor repairs since then. The property owner also referenced the sales that he submitted to the BOR, providing photographs of the front of each building to demonstrate their similarity to the subject property. The BOE objected to the sales data, arguing that without adjustments, this evidence fails to take into consideration any dissimilarities in the properties, and asserted that the 2014 sale was too remote from the tax lien date to provide reliable evidence of value.

At the outset, we remind the BOR as to the importance of properly maintaining and submitting an accurate record of its proceedings. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The BOR should take care to ensure its evidentiary record is accurate and provide all evidence considered during its proceedings in the transcript provided to this board because it defaults on its statutory obligation when it fails to transmit the record in its entirety. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078. This default of duties is particularly consequential in the present appeal where the BOR adjusted the value of the subject property but did not provide rationale in the record or participate at this board's hearing, and we are unable to discern the basis for the change. Nevertheless, the parties have been given the opportunity to cure any deficiency, including the subpoena of witnesses, at the merit hearing before this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. We recognize that under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. The court has emphasized, however, that this board cannot defer to the BOR and treat its assignment of value as presumptively value, as we must "independently evaluate the evidence to determine the value of the subject property." *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, ¶19.

The price from a recent arm's-length sale of the subject property "constitute[s] the best evidence of the property's value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶39. Although there is no "bright line" test as to whether a sale is recent to or remote from a given tax lien date, when a sale occurs more than 24 months before a tax lien date and is reflected on the property record card maintained by the auditor, it is presumed to be too remote when the auditor determined a different value during the sexennial reappraisal. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. These circumstances apply to the present case, as the April 2014 sale took place more than 24 months prior to the January 1, 2017 tax lien date, and the auditor determined a different value for tax year 2017, which was the year for which he performed the countywide reappraisal. Consequently, the sale is not presumed recent and the property owner was required to present evidence to show that the market conditions and the character of the property remained unchanged between the 2014 sale and January 1, 2017. The property owner, however, did not offer such evidence.

The record contains information that is typically utilized by appraisers, specifically information regarding sales of nearby properties and testimony regarding the subject's location. In the absence of an appraisal which analyzes such data, however, the submission of raw sales information is normally considered insufficient to demonstrate value since the trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). See, also, *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶16. Although the property owner indicated that the properties on the list are comparable to the subject both physically and in terms of location, it is unclear as to whether any other adjustments may be necessary, for instance the time or circumstances of that sale. Thus, this raw sales data alone provides little utility to establish the value of the subject.

Testimony about the subject property's neighborhood likewise provides no reliable basis to reduce the value of the subject without an appraisal to translate them to an influence on value. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). Accordingly, in the present appeal, we find that the property owner has failed to present sufficient support for his opinion of value for the subject property, and therefore find that such opinion is not probative. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

Having rejected the property owner's evidence, we now turn the BOR's determination and the BOE's argument that the auditor's value must be reinstated. As noted above, the BOR did not provide any rationale for its decision, and there is no specific evidence located within the record to establish the basis for the $33,500 value. Furthermore, the hearing notes do not provide any information that allow this board to replicate the BOR's value.

The court has held that this board must reinstate the auditor's value "when the BOR's decision to reject the auditor's valuation is completely unsupported in the record" or when the BOE "presents evidence that the auditor's valuation is more accurate than the BOR's." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 324, 2015-Ohio-3633, ¶44. Such as the case in the present appeal, where there is no probative evidence in the record regarding a reduced value for the subject property. Accordingly, this board may properly reinstate the auditor's values. See *S.-W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶20 (where the record does not contain sufficient evidence to perform an independent valuation of the property, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of the evidence in the record, we find that the true value of the subject property is best reflected by the value initially determined by the auditor.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$107,000

TAXABLE VALUE

$37,450

OHIO BOARD OF TAX APPEALS

NEW ALBANY-PLAIN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1083
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - NEW ALBANY-PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

DOC-7277 SMITHS MILL ROAD MOB, LLC
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

Entered Tuesday, March 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 222-003261-00, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the written argument of the parties.

The subject property is a medical office building, and the auditor initially assessed its total true value at $13,700,000. The appellee property owner, DOC-7277 Smiths Mill Road MOB, LLC ("DOC"), filed a complaint with the BOR seeking a reduction in value to $11,200,000. The BOE filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, DOC submitted evidence of a September 21, 2015 sale of the property for $11,200,000, asserting that it established the true value of the subject

property as of January 1, 2016. DOC also presented testimony from Bill McVeigh from Midwest Property Tax, who appeared as an agent for the owner, though it did not appear that he had first-hand knowledge of the sale. McVeigh asserted that the property had been listed for sale since 2012 because it had experienced vacancy issues but was unsure as to the amount for which it was listed. McVeigh explained that the sellers of the property were tenants in common ("TIC"), and that the buyer held a minor interest as one of the seller TICs. McVeigh testified that the property was in foreclosure at the time of the sale, but no receiver was appointed. The purchase agreement, however, indicated that the property was subject to a receivership at the time the parties agreed to the terms of the sale, though the sellers were granted a forbearance that would allow the sellers to pay off the loan, settle the foreclosure lawsuit, and terminate the receivership upon the closing of the sale. Because the BOE was first provided the purchase agreement at the hearing, the BOR granted additional time to research the issue and follow up with additional argument on the issue. Before the BOE could provide such correspondence, however, the BOR issued a decision reducing the initially assessed valuation to $11,200,000 based on the sale. From this decision, the BOE filed the present appeal.

At the hearing before this board, the BOE argued that the sale was not arm's-length and presented testimony and a written report from appraiser Samuel D. Koon, MAI, who opined that the value of the subject property was $12,600,000 as of January 1, 2016. Koon determined that the highest and best use for the property as improved is as a multi-use medical office building, commenting that its location on a medical campus increases its value as compared to properties further away from a hospital and its existing surgical space also provided increased value. Koon considered the rents of six medical office buildings in addition to eight surgical market leases, adjusting them based on the lease date, building size, location, age, and condition, which resulted in a range from $17 to $22 per square foot. Koon also considered the recently-negotiated leases in place and the asking rental rate on the subject property as of the tax lien date, concluding to a market rent of $21 per square foot for the surgical space and $18 per square foot for the remainder of the building. Koon then applied a 10% reduction for vacancy and credit loss, resulting in an effective gross income ("EGI") of $1,006,236. Koon then deducted non-collectible operating expenses ($49,413) and replacement reserve ($6,041), resulting in a net operating income ("NOI") of $950,782. To determine the appropriate capitalization rate, Koon considered the sales of comparable properties, national investor surveys for medical office buildings, a survey tracking the difference between on- and off-campus medical office buildings from 2004 through 2014, and a band-of-investment analysis. Koon concluded that a capitalization rate of 7.25% was appropriate, considering that the subject property is a "slightly above average office product within the Columbus suburban office market," and added a 0.33% vacancy-weighted tax additur. When Koon capitalized the NOI at 7.58%, it resulted in an indicated value of
$12,543,165, or $12,600,000 rounded.

Although Koon relied primarily upon the income approach to value, he also performed a sales-comparison analysis, noting that it strongly supported his income approach. Koon utilized the September 2015 sale of the subject property, adjusting it upwards to account for the change in market conditions and the condition of the sale because the property was in "technical default" at the time of transfer. Koon also adjusted the sale downward due to its above-market occupancy rate at the time of the sale. Koon further utilized sales of four additional comparable properties, making qualitative adjustments to account for differences in market conditions and physical dissimilarities, such as building size, location, effective age, condition/quality, amenities, and occupancy at the time of the sale. The adjusted sale prices ranged from $188 per square foot to $241 per square foot, and Koon explained that the variance resulted from physical differences and specific income risks involved with each comparable along with the economic conditions that existed at the time of their respective transfers. Because the subject has average freeway access and is located within a planned office development district adjacent to an orthopedic hospital, Koon concluded to $210 per square foot, which is near the middle to low end of the range, for an indicated value of $12,600,000. Koon next performed a quantitative analysis based on the net operating income performance of each comparable property to supplement the qualitative analysis. Koon used the NOI per square foot for each comparable property to calculate a ratio based on the subject's NOI per square foot. Koon multiplied the respective sale price (per square foot) by the calculated ratio for each property. This resulted in an adjusted range of $202

to $244 per square foot, and he concluded that $205 per square foot was most appropriate, equating to a total indicated value of $12,300,000. Koon reconciled the two sales-comparison analyses at $12,450,000, which he found strongly supported the income approach that received the greatest weight.

DOC submitted rent rolls for the subject property and presented the testimony and written report from appraiser Christian M. Smith, in addition to evidence of the September 2015 sale of the subject property and cross-examination of Koon. Smith testified that he considered the sale of the subject property, but it had minimal impact on his final value conclusion. Smith, who also concluded that the highest and best use for the subject property as improved is for continued medical office use, opined that the value of the subject property was $11,200,000 as of January 1, 2016 after considering the sales-comparison and income approaches to value.

For his income approach to value, Smith considered the rents for eight medical office buildings in suburban Columbus, though he did not specifically identify the extent that they were comprised of surgical space, if at all. The quoted/contract rental rates for the comparable properties ranged from $10.99 to $26.65 per square foot, primarily on a triple net basis, with one at $25 per square foot on a gross basis. Smith noted that the leasing activity shows that leases with varying reimbursement methodologies and terms of five to fifteen years are typical of the market, and may include annual escalations ranging from 0% to 3%. Smith also considered the rents in place on the subject property as of the tax lien date and spoke with market participants, to conclude that a market rent of $17.50 per square foot was appropriate for the subject property. Smith then reduced the potential rental income by 7.5% for vacancy and 1.5% for credit loss. Smith also added expense reimbursements for an EGI of $23.53 per square foot. Smith then reduced $8.76 per square foot for operating expenses and reserves for replacement, for a NOI of $14.77 per square foot, or
$886,378 total, per year. Smith considered capitalization rates derived from comparable sales, published surveys, and market participants, concluding to 8.00%. Smith added a vacancy-weighted tax additur and capitalized the NOI at a total rate of 8.3%, for an indicated value of $10,682,990, or $10,700,000 rounded.

Smith performed a sales-comparison analysis based on the sales of seven medical office properties. Smith stated that he did not utilize the sale of the subject property in his sale-comparison analysis because he typically does not use a sale of the subject property and he did not talk to anyone involved in the sale to verify the details of the sale. Smith testified that there was nothing about the sale documents that he reviewed that caused him to question its arm's-length nature. With respect to the comparable sales he utilized in his appraisal, Smith made adjustments for deferred maintenance, market conditions, location, size, age/condition, and tenancy. The adjusted price per square foot for each comparable ranged from
$91.96 to $225.50. Smith indicated that he also spoke with market participants, who indicated that the stabilized range was approximately $180 to $200 per square foot. Ultimately, Smith concluded to $195 per square foot, or $11,700,000 based on the sales-comparison approach. Smith then gave both the sales comparison and income capitalization approaches equal weight in his reconciliation, concluding that the subject's value was $11,200,000 as of January 1, 2016.

DOC maintains that Smith's appraisal offers further support for the reliability of the September 2015 sale as evidence of value, but the BOE argues that the transaction is not reliable evidence because the seller was in distress. The BOE claims that Koon's appraisal provides the most reliable evidence of value because he considered the positive aspects of the subject property, including the value added by the surgical units and its location on the medical campus. DOC maintains that through the presentation of evidence of the sale, it offered prima facie evidence of value, and that although a forced sale is presumed to be invalid, it successfully rebutted this presumption, citing to *N. Canton City School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 292, 2018-Ohio-1 ("*LFG*").

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v.*

Bd. of Revision, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, it is undisputed that the subject property sold in September 2015 for $11,200,000. The record shows that the property was in receivership at the time of the sale, though it was sold by the TIC owners during a forbearance period that lasted from June 3, 2015 through September 9, 2015. The forbearance agreement allowed the owners to market the property for sale to avoid incurring additional costs for the receivership if they successfully sold the property during this period. The receiver, however, retained the exclusive authority regarding the leasing of any portion of the subject property during the forbearance period.

While we agree with DOC that as an initial matter, it provided sufficient evidence that a sale took place, we find that DOC failed to show that the sale was nevertheless reliable evidence of value once it was revealed to have been "forced" due to pending foreclosure proceedings. DOC relied on the court's decision in *LFG*, supra, in which the court held that the owner rebutted the presumption that a forced sale was not arm's-length. Though both sales share some commonalities with respect to the circumstances of the seller, the rebuttal evidence in the present appeal varies in a significant way from that submitted in *LFG*. In *LFG*, the board of education relied solely on its argument that the sale by a receiver following a foreclosure was not arm's-length, while LFG Properties offered "substantial evidence" that the sale was arm's-length. Id. at ¶17. The court concluded that this evidence demonstrated that "the property had been aggressively marketed by a qualified professional, that there was interest in the property from a number of buyers and at least a half-dozen offers, that the buyer was unconnected with the receiver or former property owner, that the buyer had not been aware of the sheriff's sale, that the highest and best offer was accepted, and that the court found the sale price to be 'commercially reasonable.'" Id. Notably, the record in the present appeal lacks such evidence. To the contrary, DOC relied on testimony from McVeigh, who worked for Midwest Property Tax, and did not claim to have first-hand knowledge of the sale or appear to have knowledge beyond the face of the sale documents, as he was seemingly unaware that the property was in receivership, albeit in forbearance, when it transferred. DOC did not offer any evidence of the extent of the marketing, let alone show that it was "aggressive." McVeigh testified that the property was on the market for several years, but was unsure about the asking price and did not describe the extent of the marketing, number of potential buyers, or whether any other offers had been made. Additionally, unlike the situation in *LFG* where the buyer was unrelated and unaware of the unsuccessful sheriff's sale, DOC was already a minority owner in the property and presumably knew about the pending foreclosure action and the time limitations imposed by the forbearance period. While we acknowledge that DOC has offered Smith's appraisal as evidence that the sale was arm's-length, Smith did not consider the sale of the property in his analysis nor did he verify its reliability. Koon did rely upon the sale in his appraisal, but adjusted it downward because the property was in default at the time of transfer. Accordingly, we find that DOC has failed to show that the sale was an arm's-length transaction despite the pending foreclosure.

Having found that the September 2015 sale is not reliable evidence of value, we turn to the appraisal evidence submitted by the parties. This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative.

Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In a case where multiple qualifying appraisals have been presented by the parties, the court has again held that the case law "makes it clear" that the BTA is statutorily required to weigh the evidence and assess credibility of both appraisals, to independently determine a value based the evidence that we find is most probative. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4286, ¶¶10-11.

In this case, we find that Koon's appraisal is the most probative evidence of value in the record. As we review both appraisals, we focus on the conclusion of both appraisers that the highest and best use for the subject property is to continue as medical office space. First, we find that Koon's income analysis better captures the market in which the subject operates. Koon concluded that the surgical space and location on-campus increased the subject's value as compared to other suburban medical office buildings, providing data to show that surgical suites will garner higher rents than non-surgical medical office space. Koon also provided data to show that its location on a medical campus warrants a lower capitalization rate than other similar medical office buildings in different locations. Smith, on the other hand, did not specifically evaluate the surgical space separate from the non-surgical units in the building and acknowledged that while all of his rental comparables had medical tenants, they were not all exclusively or even primarily medical. In describing his rental comparables, Smith explained: "Some being less medical, some being more medical in terms of their proportion of tenants, some being all medical, some being 20 percent medical, and you know, 80 percent nonmedical tenants." H.R. at 75. Smith relied on opinions of market participants and did not provide as much market-based evidentiary support. Thus, while there is some suggestion that the general office market in the area may be more competitive in terms of higher vacancies and lower rents, particularly where the tax abatement has recently expired, the record lacks the evidence to establish the influence these factors had on the subject property. We find that Koon has better supported his conclusion that the subject can support the rental rates in his pro forma and the lower capitalization rate associated with the lower risk.

Second, we find that Koon properly considered the fact the subject was in default and a receiver had been appointed, while Smith did not. In the process of verifying the sale, Koon discovered the circumstances under which the property transferred. Additionally, Koon testified that he considered the asking rent for the property ($18 per square foot) but not the leases in place in his income analysis. Koon explained: "The fact that a significant number of them were negotiated on or about the time of the sale raises a question, in my mind, as to did the previous owner, i.e., the seller, did the buyer negotiate them prior to the sale?" H.R. at 48-49. The court filings regarding the forbearance period made it clear that the receiver was responsible for leasing activity and communication with tenants about lease renewals and any imminent risk of vacancy. Considering the fact that property was in default during this period, we agree with Koon's assessment that there is some question regarding the negotiation of these leases, which the record before us fails to answer. Thus, we agree with his decision to rely on the market data and the asking rate for the subject property rather than the leases negotiated shortly before the distressed sale. Furthermore, although the sales-comparison analysis was used merely as support for his income approach, Koon used the sale of the subject with appropriate adjustments.

In contrast, Smith ignored the sale in his sales-comparison approach, and did not evaluate the reliability of the sale itself or the potential impact of the seller's default on lease negotiations. Smith indicated that he considered the subject's rent roll, more specifically the leases for six units that were negotiated recent to the tax lien date. H.R. at 56-57. Smith indicated that these leases averaged $17.58 per square foot and he noted that they showed a downward trend in rents. H.R. at 57. According to the rent roll submitted by DOC, of the six, four of these leases renewed in September 2015, and a fifth commenced on October 1, 2015. We acknowledge that Smith did not rely exclusively on these leases and also considered some market data and the opinion from a market participant, but there is no indication that Smith considered whether the downward trend he observed was because the property was in default or some other cause.

For the foregoing reasons, we find that the September 2015 sale of the property was not at arm's-length, and that neither McVeigh's testimony nor Smith's appraisal rebuts this finding. Furthermore, we find that Koon's appraisal provides the most reliable evidence of value as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$12,600,000

TAXABLE VALUE

$4,410,000

OHIO BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE OLENTANGY LOCAL SCHOOLS, (et. al.),	CASE NO(S). 2011-576
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
DELAWARE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BOARD OF EDUCATION OF THE OLENTANGY LOCAL SCHOOLS
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

7991 COLUMBUS PIKE, LLC
Represented by:
STEPHEN D. MARTIN
MANOS, MARTIN & PERGRAM CO., L.P.A.
50 NORTH SANDUSKY STREET
DELAWARE, OH 43015-1926

Entered Tuesday, March 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is once again before the Board of Tax Appeals upon remand from the Supreme Court of Ohio, which issued a decision and judgment entry in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 151 Ohio St.3d 515, 2017-Ohio-8347, vacating this board's decision and order, dated April 21, 2014, which determined the value of the subject real property, parcel number 318-234-04-003-000, for tax year 2006. In our prior decision, this board rejected the evidence and argument presented by the appellee property owner, 7991 Columbus Pike LLC ("Columbus Pike"), found that decision made by the board of revision ("BOR") to reduce the subject property's true value was not supported by competent and probative evidence, and reinstated the value initially assessed by the auditor. The court vacated this board's decision and directed us to determine the value of the subject property based on the acreage and improvements

properly attributable to the subject parcel. On remand, we convened a hearing to allow the parties an opportunity to submit additional evidence. Following this hearing, Columbus Pike and the appellant board of education ("BOE") submitted additional written argument.

On January 1, 2009, the subject parcel consisted of 16.3 acres of land improved with an office building, garage, parking lots, and driveways. At that time, the property was zoned Farm Residential 1 ("FR-1"), which meant that it could not be further developed commercially. On March 16, 2009, the Orange Township Trustees approved an application to rezone the property as a Planned Commercial and Office District ("PC"). According to this plan, the property would be developed into office condominium units with various common elements, such as roads and driveways. On April 17, 2009, the auditor certified and recorded the Declaration and Bylaws of Condominium Association creating and establishing a plan for condominium ownership. On April 20, 2009, Columbus Pike sold the first condominium, which included the office building, garage, and immediately-surrounding land, for $2,000,000. As part of the sale, the parties also agreed to create a detention pond along U.S. Route 23. In addition to the roughly 1.488 acres that was transferred in fee simple and formed a new parcel (number 318-234-04-003-500), the purchase price included use of 1.101 acres as common elements (roads and driveways) and 1.714 acres of limited common elements (the parking lots adjacent to the office building), which were for the sole use of the owner of the condominium. Although this parcel split took place after the tax lien date, the auditor created the new parcel effective as of January 1, 2009 and determined that the total true value of both parcels, including all improvements was $2,300,000. This value resulted from proceedings for tax year 2007. In creating the new parcel, the auditor simply allocated the total value among the two, attributing $1,677,900 to the subject for land and improvements, and $622,100 to the new parcel.

Columbus Pike filed a complaint seeking a reduction of the subject parcel's value to $300,000, arguing that if $2,300,000 was total value for both parcels, and the new parcel sold for $2,000,000 just four months after the tax lien date, the value of the subject property was the remaining $300,000. The BOE filed a countercomplaint in support of retaining the auditor's initial value. The BOR agreed with Columbus Pike and issued a decision reducing the subject's value to $300,000, which the BOE appealed to this board. After allowing the parties to present additional evidence at a merit hearing, this board issued a decision that reinstated the auditor's value, having found the BOR's determination to reduce the subject's value was unsupported by competent and probative evidence.

Columbus Pike appealed the decision to the Supreme Court, which remarked that no party challenged the aggregate valuation, but rather disputed the allocation of the $2,300,000 among the two parcels. The court held that this board reasonably and lawfully disregarded the sale of the portion that was transferred during the tax year because it was not recent to the tax lien date. Specifically, the court indicated that the rezoning and creation of the condominium were material changes that took place after the tax lien date but before the sale, which caused the sale only four months after the tax lien date to be too remote to establish the property's true value. Nevertheless, the court held that this board erred by reinstating the auditor's values because in addition to the creation of the new 1.488-acre parcel, Columbus Pike portioned out1.101 acres of common elements and 1.714 acres of limited common elements, ownership of which transferred with the new parcel to the unit owner for purposes of tax liability regardless of whether that portion was legally split from the subject parcel and transferred to the new ownership. As such, the auditor was prohibited from charging taxes to the subject property for the condominium's common elements.

The court then focused on the auditor's allocation of the total value between land and improvements (both vertical buildings and paving):

> "In allocating value between the parcels, the auditor determined that the land had a value of $96,656 per acre and attributed 14.812 acres to the retained parcel and 1.487 acres to the conveyed parcel. The auditor also concluded that the conveyed parcel included the building (valued at $478,300) and that the retained parcel included all other improvements (valued at $246,300). Because Columbus Pike conveyed 4.303 acres of the original 16.3-acre parcel, it

> retained only 11.997 acres—2.815 fewer acres than what the auditor found. This caused the auditor (and, by extension, the BTA) to overvalue the retained parcel by at least $272,086.64. In addition, because other improvements may exist on those 2.815 acres, the auditor may have improperly attributed some of that value to Columbus Pike." *Olentangy Local Schools*, supra, at ¶22.

Finally, because the evidence negated the auditor's valuation, the court remanded the matter to this board to "independently determine the value of the retained parcel based on its correct acreage and the value of any improvements situated on that parcel." Id. at ¶23.

This board convened another hearing on remand, exercising our discretionary authority to hear additional evidence and allowing the parties an opportunity to supplement the existing record. The BOE offered testimony and a written report from appraiser Thomas D. Sprout, MAI, who determined that the highest and best use for the property on January 1, 2009, was to hold for future commercial use until demand would support development. Sprout relied on seven vacant-land sales that were all were zoned as either commercial or PC and occurred between January 24, 2006 and July 3, 2014. Sprout adjusted the sales to account for differences among the properties and market conditions, concluding that the value of the subject property was $1,440,000 ($120,000 per acre), as of January 1, 2009. Columbus Pike presented testimony and a written report from appraiser G. Franklin Hinkle, II, MAI, who also determined that the subject's highest and best use on the tax lien date was to hold for future commercial development. Hinkle considered three vacant-land sales that took place between July 2009 and February 2010, which he adjusted and concluded to a value of $480,000 ($40,000 per acre) as of the tax lien date. All three of these properties were zoned FR-1 at the time of the transfer but were sold to developers for future commercial development.

Each party argues that the law of the case precludes the methodology of the opposing appraiser. The BOE, for example, maintains that the because the court held that the changes effected by the declaration of the condominiums must be taken in account regarding the size of the parcel on tax lien date, the change in zoning that took place during that time must also be considered. Thus, the BOE claims, this board must rely solely on Sprout's appraisal and should exclude Hinkle's appraisal. Columbus Pike, on the other hand, maintains that the court found that the change to the zoning was a material change that took place after the tax lien date when it rejected the sale of the condominium parcel as too remote from the tax lien date. As such, Columbus Pike argues, the appraisal must be based on the sales of properties zoned FR-1 but sold for development.

We agree that the law of the case dictates the proper valuation methodology but find that neither appraiser properly valued the subject property as it existed on the tax lien date. It is helpful to reiterate the court's characterization of the case as an issue of the proper allocation of the overall $2,300,000 among the two parcels rather than a revaluation. This is largely to account for both aspects of the court's decision upon which the parties rely. On January 1, 2009, the property was a 16.3-acre parcel of land improved with an office building, garage, parking lots, and driveways. When the auditor split the condominium parcel retroactively for purposes of his records and the valuation of the property, it *legally* split the condominium and its associated common elements (4.303 acres) from the subject property (11.997 acres). This legal change for purposes of taxation, however, did not *physically* alter the characteristics of the parcel as it existed on the tax lien date, i.e., as a 16.3-acre single economic unit that was zoned FR-1 with the existing improvements. In this sense, we agree with Columbus Pike that the court held that the change in zoning was a material change to the property that took place after the tax lien date and should not be considered in its valuation. To focus on this alone, however, ignores the other aspect of the court's conclusion that the parcel split itself was a material change that took place after the tax lien date. Thus, this board is not charged with independently valuing the 11.997 acres of the subject parcel as though it were a separate economic unit from the condominium parcel on the tax lien date. Rather, we must look to the evidence in the record and determine which portion of the $2,300,000 total value for the original parcel should be attributed to the subject property, rather than the newly-created parcel.

In describing this case as an issue of allocation rather than revaluation, the court apparently considered the total valuation of the original parcel as having been decided. As such, the parties are barred from relitigating the issue of whether the total value of the two parcels was $2,300,000 on January 1, 2009, notwithstanding the fact that the new parcel is not properly before this board. Furthermore, based on the court's discussion, particularly in ¶22 as quoted above, it appears that it also considered the issue of the value of the land ($96,656 per acre) and the improvements ($478,300 for the building and $246,300 for all other improvements) to be settled, as neither party presented competent and probative evidence that a different value was correct. It is true that the court concluded that the auditor's valuation was negated by the record, but this was because it determined that the auditor included land that should be deemed part of the condominium parcel rather than the subject property. As such, the court explained that it is possible the auditor may have improperly attributed the value of improvements to the subject parcel that are situated on the portion of the subject parcel that was part of the condominium property. Thus, we view our duty on remand is to independently weigh the evidence to determine whether any improvements existed on the 2.815 acres that the auditor improperly attributed to the subject parcel rather than the condominium parcel, then determine the value of the subject parcel based on the acreage and improvements properly attributable to it.

Initially, as we merely seek to determine the proper allocation of the total value to the subject parcel, the appraisal evidence offered does little to provide any assistance in our assignment to determine whether any of the improvements remained on the subject property after the condominium was legally formed. Instead, these appraisals represent the parties' attempts to essentially take a second bite at the apple and provide evidence on remand that they failed to offer during the initial proceedings. Although the remand instructions admittedly seem fairly broad and could be read to allow the consideration of such evidence, the remainder of the decision leads us to conclude that this would be improper and contrary to the law of the case, which requires a valuation of $96,656 per acre plus the value of any improvements. We acknowledge the proper outcome may have been clearer if both parcels that comprise the economic unit were subject to the present appeal, because we would have been able to ensure that land value was based on the correct acreage, the improvements were attributed to the proper parcel, and the total added up to $2,300,000. Although either the BOE or Columbus Pike could have filed a complaint against the value of newly-created condominium parcel, there is no indication such was done in this case. Thus, we can only reduce the value of the subject parcel to account for the value of the property that was legally split in April 2009 and should have been included in the value of the condominium parcel.

Even if we were to consider the appraisal evidence offered by the parties, we would find that neither one provides a reliable opinion of value. We acknowledge that in this case, we have the benefit of hindsight because the tax lien date was more than ten years ago, and the real estate market has undergone significant changes in this time and could not have been known on the tax lien date. Compare *Graceland Shoppers L.P. v. Franklin Cty. Bd. of Revision* (Oct. 7, 2008), BTA No. 2006-T-112, unreported ("The very purpose of appraisal evidence is to proffer evidence that proves value. Where, as here, we have the benefit of knowing what occurred to the subject property after tax lien date, appraisal evidence may be probative as to the question of whether those factors are indeed factors that affect value as of tax lien date. This is the nature of a retrospective appraisal."). In this way, the auditor's value, which was based on litigation for tax year 2007 which would have taken place in 2008 (at the earliest), reflects the parties' then-current understanding of market conditions.

We first reject Sprout's appraisal because he considered the property as though it had already changed its zoning, and many of his comparable sales took place further in time from the tax lien date. Even with some adjustment for a change in market conditions, we find that they do not provide a reliable indication of the market during the time at issue. Hinkle, on the other hand, did consider the zoning in place and utilized sales that were close in time to the tax lien date. Where Hinkle's analysis goes astray is his treatment of the parcel as it existed on January 1, 2009. Hinkle concluded to a value of the 11.997 acres as though they were separate from and independent of the 4.303 acres that were part of the original 16.3-acre parcel, essentially a donut with a hole removed. Hinkle also took into account the detention pond along US Route 23, including the limited frontage that resulted, thereby leaving the property effectively shaped as a horseshoe with limited frontage along the primary thoroughfare. This conclusion is not born out by the evidence, as the

pond was not created until *after* the condominium was formed and was, therefore, not in place on the tax lien date. We can observe the adjustment he made to account for the detention pond, but it is less clear the extent that the misunderstanding as to the subject's shape and frontage would have had not only due to the frontage, but also since the "hole" had not yet been removed and it was a more or less square property with an office building in the middle. Because we do not know whether or to what extent his conclusions would have changed had these issues been properly considered, we likewise reject Hinkle's appraisal.

Finally, we are left to complete the task ordered on remand, i.e., determine whether any improvements should be attributed to the 11.997 acres properly included in the value of the subject parcel. Based on all the evidence before us, we find that all improvements, including any paved areas that add value, transferred with the condominium. Accordingly, the value of the subject parcel should be based solely on the auditor's land value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2009, were as follows:

TRUE VALUE

$1,159,580

TAXABLE VALUE

$405,850

OHIO BOARD OF TAX APPEALS

1763 SHILOH LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1360, 2018-2294

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1763 SHILOH LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

TROTWOOD-MADISON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MICHAEL W. SANDNER
PICKREL, SCHAEFFER & EBELING
2700 KETTERING TOWER - 27TH FLOOR
40 N. MAIN STREET
DAYTON, OH 45423

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] 1763 Shiloh LLC ("Shiloh") appeals from a decision of the Montgomery County Board of Revision ("BOR") valuing the subject parcel at $71,040 for tax year 2017. Shiloh appears to have filed two appeals involving the valuation of the subject parcel for tax year 2017. The appeals have been consolidated for decision purposes. Ohio Adm. Code 5717-1-09. We consider this matter upon the notices of appeal, the transcript certified by the BOR, and this board's hearing record.

[2] Shiloh purchased the subject in November 2009 for $25,000. In a prior case, we ordered the subject be valued at $25,000 for tax year 2011 in accordance with that sale. *1763 Shiloh LLC v. Montgomery Cty. Bd. of Revision* (June 28, 2013), BTA No. 2012-X-4430, unreported. In accordance with the triennial update of

values in Montgomery County for tax year 2017, the auditor revalued the subject at $66,500 for tax year 2017, and Shiloh filed a decrease complaint asking for a value of $25,000 in accordance with the 2009 sale. In support, Shiloh has submitted the settlement statement and unadjusted market data. Shiloh's representative testified the subject is improved with rental housing. At the BOR, Shiloh relied solely on the settlement statement and the unadjusted data. Shiloh did not obtain an appraisal. The BOR orally affirmed the auditor's value of $66,500. However, the BOR's written decision states a new value of $71,040.

[3] The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

[4] We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35; *Smith v. Erie Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-466, unreported.

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

[6] In this case, Shiloh offers a sale that occurred approximately eight years before tax lien date. Shiloh did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. The testimony offered by Shiloh's manager in support of the sale price was conclusory and unsupported by extrinsic evidence. We find the sale is too remote to be competent evidence of value for tax year 2017. See *Akron City Schools*, supra, at ¶¶ 12-17.

[7] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of* Revision, 133 Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. Shiloh did not obtain an appraisal and instead offers raw sales data. However, raw sales data alone is not a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate, supra. Accordingly, we cannot find Shiloh's

unadjusted market data as competent evidence of value. Having disposed of Shiloh's only evidence, we find it has failed to carry its burden.

[8] We are also required to review the BOR's value of $71,040. Again, the BOR orally stated it was affirming the auditor's value, but the written decision indicates a value of $71,040. The BOR member notes also suggest the members did not intend to adopt a new value. However, the BOR did not file written argument with us or attend our hearing to explain the discrepancy. We must, therefore, reject the BOR's value because it is not supported by evidence in the record. See *Sapina*, supra, at ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").Accordingly, we order the auditor's initial value to be reinstated.

[9] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER H33 01423 0009

TRUE VALUE

$66,500

TAXABLE VALUE

$23,280

OHIO BOARD OF TAX APPEALS

SHARON FROST, (et. al.), Appellant(s), vs. CLINTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1556 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHARON FROST
1260 WARREN DR
WILMINGTON , OH 45177

For the Appellee(s) - CLINTON COUNTY BOARD OF REVISION
Represented by:
RICHARD W. MOYER
PROSECUTING ATTORNEY
CLINTON COUNTY
103 EAST MAIN STREET
WILMINGTON, OH 45177

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property Owner Sharon Frost appeals from a decision of the Clinton County Board of Revision ("BOR") valuing the subject parcel at $126,870 for tax year 2017. We consider this matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and Ms. Frost's written argument.

The auditor valued the subject at $155,890 for tax year 2017. S.T., Ex. H. Ms. Frost filed a decrease complaint seeking a value of $90,000 because the subject "has severe and extensive damage on the outside of the property, but especially on the inside." S.T., Ex. A. At the BOR hearing, Ms. Frost explained she purchased the subject in 1993 for $120,000 but has since discovered the residence has some defects. S.T., Ex. E at 14-15, 17, 22-23. Ms. Frost specifically noted structural problems with the porch addition, the atrium, and the house's walls. Id. She did not have the subject appraised. The BOR ultimately granted Ms. Frost a partial reduction to $126,870 but did not specify the legal or factual justification for doing so.

Mr. Frost appealed to this board but did not request a hearing. Ms. Frost filed a letter with us on December 31, 2018, alleging she recently discovered black mold in the residence. She attached several photographs and a remediation quote from Midtown Roofing. Our rules are clear that new evidence must be submitted at a hearing before this board, which Ms. Frost did not request. See Ohio Adm.Code 5717-1-16(A); BTA Notice of Appeal at 1. Accordingly, we must disregard her additional evidence and decide this case "upon the record developed before" the BOR. Ohio Adm.Code 5717-1-16(A); see also *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported.

The appellant must prove the adjustment in value requested when appealing from a board of revision to us. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Olentangy Local Sch. Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶¶ 15, 22.

Ms. Frost purchased the subject in 1993 for $120,000. The Ohio Supreme Court has consistently held a recent, arm's-length sale is the best evidence of value. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio S.3d 92, 2014-Ohio-1588, ¶¶ 1-2. A sale that occurs more than 24 months before tax-lien date, like the 1993 sale, is generally not recent. See *id.* at ¶¶ 1-2. No party to this appeal asks us to adopt the sale price, and we find no evidence in the record to suggest "the sale [continues] to be a reliable indication of value despite the passage of time." See *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Akron City School*, supra). Accordingly, we cannot rely on the sale as competent evidence of value on January 1, 2017.

When a competent sale price is unavailable, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 195 N.E.2d 908 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of* Revision, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). Ms. Frost did not have the subject appraised. Instead, she relies upon her BOR testimony and photographs to prove the subject is overvalued because of negative characteristics.

We do not, however, find that evidence a viable substitute for an appraisal. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra, at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7). Here, the impact those negative characteristics could have on value is not self-evident. Accordingly, we cannot rely on the evidence of the subject's negative characteristics to adjust the subject's value.

Likewise, we must reject Ms. Frost's subjective opinion of value, which she provided through her testimony and written argument. To be sure, an owner is entitled to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). While she might be an expert in her own property, we find nothing in the record to establish her expertise in property valuation or the local market. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative). Having disposed of the only evidence presented by Ms. Frost, we must find she failed to carry her burden and is not entitled to the reduction.

We are also required to evaluate independently the value adopted by the BOR, which differed from the auditor's original value. Again, we "eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v.*

Franklin Cty. Bd. of Revision, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"). Here, we are unable to determine why the BOR valued the subject at $126,870 instead of the auditor's value of $155,890. Neither the parcel card nor the BOR's decision gives us much insight. The parcel card comment section does seem to indicate some change was made to the parcel card for the 2017 tax year. It appears improvements were both added and removed. However, we are unable to decipher how those changes, assuming they were adopted, affected the value and what effect that change might have had on the BOR's adopted value. Moreover, the record is unclear whether the BOR's value was adopted pursuant to those parcel card changes or for some other reason. Accordingly, we see no reason to deviate from the auditor's original valuation. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 ("BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof").

For tax year 2017, we order the property to be valued in accordance with the following values:

PARCEL 290250526000000

TRUE VALUE

$155,890

TAXABLE VALUE

$54,560

OHIO BOARD OF TAX APPEALS

WENGER ACQUISITIONS,LLC, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1555 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WENGER ACQUISITIONS,LLC
Represented by:
KYLE WENGER
WENGER ACQUISITIONS, LLC
2100 VENTURE CIRCLE SE
MASSILLON, OH 44646

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

MASSILLON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the appellant property owner's appeal from a decision of the Stark County Board of Revision ("BOR") determining the value of parcel number 10008179 for tax year 2017. We consider the matter upon the notice of appeal, the statutory transcript certified by the county auditor, and the record of the hearing before this board ("H.R.").

The county auditor initially valued the subject property at $472,200 for tax year 2017. Appellant, Wenger Acquisitions, LLC, filed a complaint against the valuation, requesting a decrease to $165,000 based on its purchase of the property in an auction sale for $125,220 in November 2016. The Massillon City School District Board of Education ("BOE") filed a countercomplaint seeking to maintain the auditor's initial valuation. At the BOR hearing, Kyle Wenger, member of the owner LLC, testified that the property was purchased in an auction sale and was intended to be subdivided and developed. When questioned by

counsel for the BOE, Mr. Wenger indicated that he had listed the property, as a finished subdivision, for $862,000, but that the project was now on hold. The BOE presented no independent evidence of value. On the recommendation of a staff appraiser for the county, the BOR voted to make no change to the initial value of the property.

Appellant thereafter appealed to this board, seeking a reduction in value to $126,000. At this board's hearing, Mr. Wenger testified that appellant purchased the property in November 2016 from the Massillon Cemetery Association at an auction involving the subject property and five additional properties. He indicated the auction was well attended, with at least thirty-five bidders, and that there was a published minimum reserve price on the subject property. Mr. Wenger testified that the purchase also included a right of way, not previously part of this parcel, that was added to the subject parcel at the time of sale. He argued that, although the county's staff appraiser's report mentioned an appraisal of the property by appraiser John Emig, such appraisal was only for the right of way, not the remaining 36+ acres comprising the subject property. Neither the county appellees nor the BOE appeared at this board's hearing.

As the appellant in this matter, the burden is on the owner "to demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. "The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. There is no dispute that appellant purchased the subject property approximately two months prior to tax lien date for $125,220, and appellant presented the settlement statement and conveyance fee statement with its complaint as evidence of the sale. We must determine whether the sale was recent and occurred at arm's-length.

A sale by auction is presumed *not* to be the best evidence of value in the absence of evidence that the sale was voluntary and at arm's length. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. "Whether a transaction occurred at arm's length depends on whether the sale was voluntary, whether it took place on the open market, and whether the parties acted in their own self interest." Id. at ¶17, citing *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). Here, Mr. Wenger testified that the auction was widely advertised through newspaper and online advertisements, was well attended, and involved many bidders. There is no indication that the seller was under any compulsion to sell the property or that any of the parties acted other than in their own self interests. Further, although Mr. Wenger indicated at the BOR hearing that the auction might have been an absolute auction, he testified before this board that a minimum price was advertised for the subject property. Compare *Brecksville-Broadview Hts. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 103015, 2016-Ohio-3166 (affirming this board's decision finding absolute auction was not arm's-length). Based on the record before us, we find the November 2016 sale was voluntary and arm's length.

We must also determine whether the sale is recent to tax lien date (January 1, 2017). The sale occurred less than two months prior to tax lien date. While appellant indicated on its complaint that $45,000 of improvements were made to the property, it further indicated that such improvements were made *after* tax lien date, in June 2017. Further, at this board's hearing, Mr. Wenger testified that the improvements consisted only of putting in a temporary access driveway. We find no substantial changes to the property occurred between the date of sale and tax lien date, and therefore find the sale to be recent.

Based upon the foregoing, we find the November 2016 sale of the property for $125,220 to be the best evidence of its value. It is therefore the order of this board that the true and taxable values of the property as of January 1, 2017, were as follows:

TRUE VALUE

$125,220

TAXABLE VALUE

$43,830

OHIO BOARD OF TAX APPEALS

JOHNSON MATTHEW WILLIAM, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1282

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHNSON MATTHEW WILLIAM
Represented by:
MATTHEW JOHNSON
227 WATERVLIET AVE.
DAYTON, OH 45420

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Matthew William Johnson appeals to this board from a decision of the Montgomery County Board of Revision ("BOR") which determined the value of his primary residence, parcel number R72 14802 0037, for tax year 2017. Neither appellant nor the county appellees requested a hearing before this board. We therefore decide the matter upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The auditor initially valued the subject property at $74,410 for tax year 2017. Mr. Johnson filed a complaint seeking a decrease in value to $55,000, based on comparable sales, "mortgage history of home over last decade," and the property's condition. At the BOR hearing, he testified that he purchased the home in September 2017 in an arm's-length transaction after the property had been listed for sale for approximately thirteen months, and submitted a copy of the settlement statement as evidence of the sale. He indicated he based his opinion of value on sales of similar properties in the subject's area. After considering the evidence presented, the BOR voted to decrease the value of the property to the owner's requested value - $55,000; however, the decision it issued reflected a value of $55,830. The reason for the discrepancy is not apparent from the record.

Mr. Johnson thereafter appealed to this board, requesting a value of $58,000. On his notice of appeal, he indicated the value was based on the recent sale of the property, listing prices of other homes, negative

characteristics (including no central air, outdated, size, and condition), and data from an internet property site indicating the property is overvalued. Neither he nor the county appellees submitted any written argument further explaining their positions.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. There appears to be no dispute that appellant's purchase of the property in September 2017 was an arm's-length transaction. The property was listed on the open market, Mr. Johnson indicated he had no prior relationship to the seller, and neither party to the transaction appears to have been under any duress. See *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). Moreover, we find nothing in the record to suggest that the sale was not recent to tax lien date, i.e., January 1, 2017. While Mr. Johnson testified that he made improvements to the property, such improvements were made after the date of sale, and, therefore, after tax lien date. Accordingly, the best evidence of the subject property's value as of tax lien date is the amount for which it sold – $52,000.

The BOR based its decision on Mr. Johnson's testimony about sales of comparable properties in the subject's area; however, no tangible evidence of such sales are in the record before us to review. In the absence of any such evidence, we do not find sufficient evidence to support the BOR's value. The Supreme Court's "case law has repeatedly instructed [this board] to eschew a presumption of validity of the BOR's value ***." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. Further, where "the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. We find nothing in the record to rebut the presumptions accorded the September 2017 sale of the property as the best evidence of value as of tax lien date.

Based upon the foregoing, we find the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$52,000

TAXABLE VALUE

$18,200

OHIO BOARD OF TAX APPEALS

JOHN H. THOLKING, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-851, 2018-1280

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN H. THOLKING
Represented by:
JOHN THOLKING
10064 OLD FARM CT.
CINCINNATI, OH 45242

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are again considered by this board, following issuance of an order on December 11, 2018, finding that we lack jurisdiction over BTA No. 2018-851 and ordering the parties to show cause why BTA No. 2018-1280 should not be dismissed on the same ground, i.e., for failing to file notice of the appeal with the board of revision within thirty days of the mailing of its decision as requested by R.C. 5717.01. Appellant has responded to our order, and the county appellees have complied with our request to supplement the statutory transcript. We therefore proceed to resolve these matters with the information now before us.

As a creature of statute, this board has only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt*, 143 Ohio St. 547 (1944). The means for invoking our jurisdiction in an appeal from a decision of a county board of revision is provided by R.C. 5717.01:

> "An appeal from a decision of a county board of revision may be taken to the board of tax appeals *within thirty days* after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. *** Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or authorized delivery service, with the board of tax appeals *and with the county board of revision*. *** Upon receipt of such notice of appeal such county board of revision shall notify all persons thereof who were parties to the proceeding

> before such county board of revision *** and shall file proof of such notice or, in the case of ordinary mail, an affidavit attesting that the board sent the notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith." (Emphasis added.)

As the Supreme Court recently reiterated, "the filing of a notice of appeal with the board of revision is essential to perfecting an appeal." *Ross v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4746, ¶10, citing *Akron Std. Div. of Eagle-Pitcher Industries, Inc. v. Lindley*, 11 Ohio St.3d 10, 11 (1984). Failure to comply with such filing requirement within the statutory thirty-day period "is fatal to the appeal." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). See also *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192, 194 (1989); *Salem Med. Arts. & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621, 623 (1998).

As indicated in our earlier order, these appeals are taken from two decisions of the Hamilton County Board of Revision ("BOR") determining the value of parcel number 603-0008-0241 for tax year 2017. In accordance with our finding in the December 11, 2018 order that appellant failed to file notice of the appeal docketed as BTA No. 2018-851 within the time required by statute, we find we lack jurisdiction over the appeal. Accordingly, the county appellees' motion to dismiss BTA No. 2018-851 is well taken.

The statutory transcript certified by the county for the appeal docketed as BTA No. 2018-1280 likewise indicates that notice of that appeal was not filed with the board of revision within the 30-day statutory time period. Although appellant responded to our order, he made no argument or showing that he properly filed notice of the appeal with the BOR. Accordingly, we find we likewise lack jurisdiction over BTA No. 2018-1280.

Based upon the foregoing, this board lacks jurisdiction to consider the merits of this matter, including the propriety of the BOR's issuance of two decision letters. It is the order of this board that these appeals are hereby dismissed.

OHIO BOARD OF TAX APPEALS

1721 RADIO LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-586, 2018-587, 2018-588, 2018-589, 2018-590, 2018-633, 2018-634, 2018-635, 2018-636, 2018-637, 2018-638, 2018-639, 2018-640, 2018-641, 2018-642, 2018-643, 2018-644, 2018-645, 2018-659, 2018-775 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1721 RADIO LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

DAYTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAYTON CITY SCHOOLS BOARD OF EDUCATION
115 S LUDLOW ST
DAYTON, OH 45402

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellants, affiliated limited liability companies, challenge 20 individual decisions of the Montgomery County Board of Revision ("BOR") determining the subjects' true values for tax year 2017. We consider these appeals upon the notices of appeal, the transcripts certified by the BOR, our hearing record ("H.R."), and appellants' exhibits. No appellee attended our hearing or filed argument in support of the BOR decisions.

[2] The subjects are single and multi-family rental homes operated by the same management company, Pepzee Realty LLC ("Pepzee"). Pepzee filed the notices of appeal; its manager testified at this board's hearing and at the various BOR hearings. In support, Pepzee has submitted, for each subject, evidence of a sale and unadjusted market data. H.R. at 1-3. No party offered any appraisals.

[3] While we evaluate each property individually below, we first survey the law governing our review. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[4] We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"); see also *Smith v. Erie Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-466, unreported.

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. A sale that postdates tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19.

[6] The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" *Id.* at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). In fact, a proponent may generally meet that initial burden with a complaint coupled with purchase documents. Corroborating testimony is unnecessary.*Id.*The OhioSupreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." *Id.* at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. *Id.*

[7] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of* Revision, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion ofvalue, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile data. An appraiser adjusts

for the differences between the comparables and the subject. An appraiser may also use other recognized methods of valuation such as the cost and income capitalization approach. See *Gallick*, supra.

[8] Raw sales data alone is not a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). While we address each subject property individually below, we note here that we cannot find appellants' unadjusted sales data competent evidence of value for any of the subjects. First, the data is not a substitute for an appraisal. Second, each comparable varies from the respective subject; they vary from the subjects in size, number of bedrooms, number of bathrooms, age, condition, and location. An expert's appraisal is needed to control for those variables and then apply the distilled data to the subject. Appellants are presumably aware of this rule since this board has rejected similar evidence in prior cases brought by Pepzee. See, e.g., *466 Grand LLC v. Montgomery Cty. Bd. of Revision* (Nov. 5, 2015), BTA No. 2014-4870, unreported.

[9] We also see the data appears to have been compiled by a broker. A broker is not an appraiser. See *Springfield Local Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported. As we have noted before, "real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience." Id. (quoting The Appraisal of Real Estate (13th Ed.2008)). We have also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Equally problematic, no party with personal knowledge to the listed sales appeared before the BOR or this board. That means the reports are unreliable hearsay, and the testimony of Pepzee's representative does not cure that defect because he had no actual knowledge of the various transactions contained in the reports. The Ohio Supreme Court has been clear that "the owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19.

[10] Pepzee's manager testified about several of the subjects at the various BOR hearings and our hearing. He opined a value for several subjects based on his opinion of value. Precedent likewise requires us to reject his subjective opinion of value. While an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." 2018-414, unreported.*Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No.

[11] Finally, we acknowledge several of our determined values below are higher than the BOR's value. Notably, the BOR modified the auditor's valuation in several cases using what the BOR characterized as an "income approach." It is unclear, however, what formula the BOR used or where the BOR obtained the necessary data. It appears the BOR used a gross income multiplier using rents as reported by Pepzee's representative at the BOR hearing. While gross rents would be probative to an income approach appraisal, additional information would be necessary and a formal appraisal developed. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 1997-A-175, unreported. This board has rejected the untailored gross rent multiplier method of valuation and has been affirmed in doing so. See *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845. Gross rent multipliers are only reliable in specific circumstances and generally require application by an appraiser. Id. at ¶ 17. In *Edgewood Manor of Westerville, Inc. v. Franklin Cty. Bd. of Revision* (Sept. 8, 2006), BTA No. 2004-T-706, unreported, we stated: "Appraisers who attempt to derive and apply gross income multipliers for valuation purposes must be careful for several reasons. First, the properties analyzed must be comparable to the subject property and one another regarding physical, locational, and investment characteristics. Properties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes. The Appraisal of Real Estate, at 546. The Appraisal of Real Estate further cautions that income multipliers should not be used to determine value under the market data approach because comparable prices are not adjusted on the basis of differences in net

operating income per unit because rents and sale prices tend to move in relative tandem."

[12] We see no evidence in the record that the BOR controlled for all those variables nor are we able to determine where the BOR obtained the data to create its gross income multiplier. Accordingly, in the cases below where we cannot replicate the calculation, we reinstate the auditor's value per Ohio Supreme Court mandate. See *Sapina, supra*, at ¶ 35.

[13] Having surveyed the law generally applicable to the subject properties, we address each in turn, referenced by owner and address (if different from owner name).

1721 Radio LLC (125 S. Harbine)

[14] The county auditor valued this property at $8,140 for tax year 2017, and appellant filed a decrease complaint requesting a value of $6,000. Appellant purchased the subject in November 2015 and recorded the deed in December 2015. Appellant purchased the subject from Cecil Thomas via general warranty deed for $6,000 in cash. The parcel card corroborates that price. Accordingly, appellant met its initial "relatively light burden" with the purchase documents, which shifts the burden of rebuttal to the BOR. See *Lunn*, supra, at ¶ 14.

[15] Having independently reviewed the record, we find the county appellees failed to rebut the sale. The BOR argued the subject was renovated and generated rents as of the BOR hearing date. However, no party submitted tangible evidence of the changes made between the sale date and tax-lien date; no party submitted tangible evidence showing how those changes would have affected the value of the subject as of tax-lien date. The only testimony on the issue came from Pepzee's manager who did not unpack the alleged renovations with specificity. In the absence of such evidence, we are unable to conclude the BOR rebutted the sale price.

[16] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 04707 0049

TRUE VALUE

$6,000

TAXABLE VALUE

$2,100

624 Hall LLC

[17] The county auditor valued this property at $30,420 for tax year 2017, and appellant filed a decrease complaint requesting a value of $25,000 citing a 2012 sale. The BOR rejected the sale as too remote; we agree. Pepzee's representative testified about rents and the condition of the subject but submitted no appraisal showing the sale price remains competent evidence of value. We likewise reject appellant'sunadjusted sales data because the data is not competent evidence of value. See *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported.

[18] The BOR also justified its decision to reject the sale using the gross income multiplier approach. The BOR stated its calculation rendered a value of over $50,000. Because we are unable to replicate that calculation, we do not adopt that value. We have independently reviewed the record but see no reason to deviate from the auditor's value, which the BOR ultimately upheld.

[19] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 05703 0071

TRUE VALUE

$30,420

TAXABLE VALUE

$10,650

1721 Radio LLC (137 S. Harbine)

[20] The county auditor valued this property at $8,320 for tax year 2017, and appellant filed a decrease complaint requesting a value of $6,000 citing a 2015 sale. Appellant purchased the subject from Thomas Cecil via general warranty deed for $6,000 in cash. While not required for a qualifying sale, we note the settlement statement shows a broker's commission was paid. The parcel card corroborates the sale price. Accordingly, appellant met its initial "relatively light burden" with the purchase documents, which shifts the burden of rebuttal to the county appellees. See *Lunn*, supra, at ¶ 14.

[21] The BOR rejected the sale price because it felt the sale was distressed. The BOR noted the seller was "Thomas Cecil by Michael T. Cecil, attorney in fact." The BOR interpreted the use of "attorney in fact" to suggest the sale was distressed. The BOR did not dispute the sale was recent. We have found no precedent from this board or a reviewing court for the proposition that a sale is presumably distressed if transferred through a seller's attorney-in-fact absent more evidence. We have independently reviewed the record and find no evidence to rebut the sale. We accordingly find the sale price to be the best evidence of value.

[22] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 04707 0052

TRUE VALUE

$6,000

TAXABLE VALUE

$2,100

1721 Radio LLC (253 S. Harbine)

[23] The county auditor valued this property at $19,160 for tax year 2017, and appellant filed a decrease complaint requesting a value of $18,000 based on a December 2015 sale. Appellant purchased the subject from Thomas Cecil in a cash transaction, and a broker commission was reported. The parcel card corroborates the sale price. Accordingly, appellant met its initial "relatively light burden" with the purchase documents, which shifts the burden of rebuttal to the county appellees. See *Lunn*, supra, at ¶ 14.

[24] The BOR did not refute the sale with actual evidence. Instead, it rejected the sale because the BOR felt the subject generates "decent rents." No party submitted appraisal evidence showing how the rents generated overall affect value. In the absence of such evidence, we are unable to conclude the sale price has been rebutted.

[25] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 04409 0046

TRUE VALUE

$18,000

TAXABLE VALUE

$6,300

37 FER DON LLC

[26] Appellant appears to have appealed the BOR's decision for this property in error. The county auditor valued the property at $10,000. Appellant filed a complaint requesting a value of $10,000, and the notice of appeal to this board asks for a value of $10,000. Pepzee's representative orally dismissed the complaint at the BOR hearing, but it appears the BOR issued a decision. Because there is no actual controversy between the parties, we dismiss this appeal. See *Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA Nos. 2002-T-1271, et al., unreported.

315 Willowwood LLC

[27] The auditor valued this property at $48,670 for tax year 2017, and appellant filed a decrease complaint requesting a value of $16,500 based on a 2011 sale. The BOR rejected the sale as too remote, and we agree. Pepzee's representative testified about rents and the condition of the subject but submitted no appraisal showing the sale price remains competent evidence of value. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[28] The BOR reduced the auditor's value to $36,120 using a gross income multiplier. We must reject that value because it is not supported by evidence in the record. See *Sapina,* supra, at ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. To develop a reliable income capitalization approach, at a minimum, an "analysis of cost and sales data" is needed to complete the calculation. The Appraisal of Real Estate (14th Ed.2013)). The record is devoid of any such analysis or data. Accordingly, we see no reason to deviate from the auditor's value. See *Jakobovitch,* supra, *at* ¶ 12.

[29] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 11208 0010

TRUE VALUE

$48,670

TAXABLE VALUE$17,030

300 Redwood LLC

[30] The auditor valued this property at $41,300 for tax year 2017, and appellant filed a decrease complaint requesting a value of $7,500, citing a December 2010 sale. The BOR correctly rejected the sale as too remote. We likewise reject the sale as too remote. Pepzee's representative testified about rents and the condition of the subject but submitted no appraisal showing the sale price remains competent evidence of value. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[31] The BOR reduced the value to $29,790 using a gross income multiplier. We must reject that value because it is not supported by evidence in the record. See *Sapina,* supra, at ¶ 35. The record is devoid of any further analysis or data. Accordingly, we see no reason to deviate from the auditor's value. See *Jakobovitch,* supra, at ¶ 12.

[32] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 11004 0018

TRUE VALUE

$41,300

TAXABLE VALUE

$14,460

405 Knecht LLC

[33] The auditor valued this property at $36,790 for tax year 2017. Appellant filed a decrease complaint asking for a value of $14,000 citing a 2010 sale. The BOR correctly rejected the 2010 sale as too old. Pepzee's representative testified about rents and the condition of the subject but submitted no appraisal showing the sale price remains competent evidence of value. We find such evidence does not add utility to the sale price. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[34] The BOR reduced the value somewhat to $34,900 using a gross income multiplier. As before, we must reject that value because it is not supported by evidence in the record. See*Sapina,* supra, at ¶ 35.Accordingly, we see no reason to deviate from the auditor's value. See *Jakobovitch,* supra, at ¶ 12.

[35] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 10911 0028

TRUE VALUE

$36,790

TAXABLE VALUE

$12,880

1553 Salem LLC

[36] The county auditor valued this property at $45,990 for tax year 2017, and appellant filed a decrease complaint requesting a value of $10,000 citing a 2009 sale. The BOR rejected the sale as too remote; we agree. Pepzee's representative testified about rents and the condition of the subject but submitted no appraisal showing the sale price remains competent evidence of value. He also testified appellant has tried to sell the subject but has been unable to do so. We find that evidence insufficient to justify a reduction in value for tax year 2017. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[37] The BOR reduced the value to $32,400 for two reasons. First, the BOR developed that value using a gross income multiplier. Second, the BOR took into consideration appellant's attempt to sell the subject at a list price of $35,000. As before, we must reject the gross income multiplier because that value because it is not supported by evidence in the record. We likewise reject the decrease on the basis that appellant was unable to sell the subject. "[A] listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." *Kaiser v. Franklin Cty. Bd. of Revision,* 10th Dist. Franklin No. 10AP-909,

2012-Ohio-820, at ¶ 20. Accordingly, we see no reason to deviate from the auditor's value.

[38] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 06909 0034

TRUE VALUE

$45,990

TAXABLE VALUE

$16,100

1725 Manor LLC (623 Hulbert St.)

[39] The auditor valued this property at $10,780 for tax year 2017, and appellant filed a decrease complaint requesting a value of $8,000 citing a December 2015 sale. Appellant purchased the subject from Thomas Cecil via general warranty deed for $8,000 in cash. While not required for a facially valid sale, the settlement statement reports a broker's commission was paid. The parcel card corroborates the sale price. Appellant's representative at the BOR testified the subject has been generally unoccupied. Accordingly, appellant met its burden.

[40] We find the BOR did not rebut the presumption created by the sale. The BOR rejected the sale stating it was not arm's-length and stating the subject produced rents in prior years. The record does not contain evidence, contrary to the BOR's finding, that the December 2015 transaction was not arm's-length. The BOR does not allege the sale was too remote. The fact that appellant collected rent at some point does not rebut the sale presumption.

[41] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 02412 0075

TRUE VALUE

$8,000

TAXABLE VALUE

$2,800

45 McClure LLC

[42] The auditor valued this property at $33,850 for tax year 2017, and appellant filed a decrease complaint requesting a value of $15,000 citing a 2014 sale. The BOR rejected the sale because it was too remote and because the seller was the Federal National Mortgage Association or Fannie Mae. While we have held Fannie Mae sales are presumptively valid, we do not find the sale to be competent evidence of value because it is too remote. See *Lott v. Summit Cty. Bd. of Revision* (Apr. 3, 2018), BTA No. 2017-604, unreported; *Akron City Schools*,supra,at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick,* supra. Pepzee's representative testified about rents and the condition of the subject but submitted no evidence demonstrating showing the sale price remains competent evidence of value. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[43] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 01308 0029

TRUE VALUE

$33,850

TAXABLE VALUE

$11,850

325 Linwood LLC

[44] The auditor valued this property at $37,110 for tax year 2017, and appellant filed a decrease complaint requesting a value of $10,006 citing a 2013 sale. We considered that same sale in a prior case concerning tax year 2013. See *325 Linwood LLC v. Montgomery Cty. Bd. of Revision* (Nov. 5, 2015), BTA No.2014-3667, unreported. In that case, we rejected the sale as the best evidence of value, because it was purchased from HUD, and, therefore, a forced sale.

[45] We see no reason to revisit that holding in this case for tax year 2017. We also find the sale is now too remote to be competent evidence of value for tax year 2017. The only other evidence appellant offered was unadjusted market data, which is not competent evidence of value. See *Copp,* supra. We, therefore, see no reason to deviate from the auditor's value, which the BOR affirmed.

[46] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 05905 0059

TRUE VALUE

$37,110

TAXABLE VALUE

$12,990

Elite Manor LLC (203 Klee Ave.)

[47] The auditor valued this property at $26,090 for tax year 2017, and the appellant filed a decrease complaint requesting a value of $12,000 citing an October 2015 sale. The BOR rejected the sale because it stated it did not know if the sale occurred on the open market. The BOR noted no commission was reported on the settlement statement.

[48] In *Zimmer v. Stark Cty. Bd. of Revision* (Nov. 16, 2016), BTA No. 2016-681, unreported, we held that the opponent of a facially qualifying sale must offer evidence to rebut the presumption created by the sale. It is not the proponent's responsibility to bolster the sale price with additional evidence unless and until the opponent rebuts the sale. Id. at 3-4. In another case, we likewise held the opponent of the facially qualifying sale had to make an "affirmative demonstration that such sale is not qualifying for tax valuation purposes." *Zimmer v. Stark Cty. Bd. of Revision* (Feb. 3, 2016), BTA No. 2015-637, unreported, affirmed 5th Dist. Stark No. 2016CA00040, 2016-Ohio-7056); see also *Zimmer v. Stark Cty. Bd. of Revision* (Nov. 6, 2017), BTA Nos. 2017-622, 623, unreported. In *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶20, the court wrote "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." In the absence of any other evidence indicating the October 2015 sale was not arm's-length, we find it is the best evidence of the property's value on tax lien date.

[49] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 04209 0011

TRUE VALUE

$12,000

TAXABLE VALUE

$4,200

472 Allwen LLC (2919 Ida Ave.)

[50] The auditor valued this property at $31,480 for tax year 2017, and appellant filed a decrease complaint requesting a value of $2,500 citing a September 2016 sale. The BOR rejected the sale because it was a land bank sale. The BOR did not claim the sale was too remote. We have found land bank sales "to be akin to sales from financial banks, which this board has repeatedly found to be arm's-length." *REO Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Mar. 6, 2014), BTA No. 2013-4641, unreported. Accordingly, we find the sale to be the best evidence of value because the BOR did not rebut the presumption created by the sale.

[51] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER E20 18005B0006

TRUE VALUE

$2,500

TAXABLE VALUE

$880

Pepzee Realty LLC (313 Linwood St.)

[52] The auditor valued this property at $38,290 for tax year 2017, and appellant filed a decrease complaint requesting a value of $2,500 citing a May 2016 sale. The BOR rejected the sale because the settlement statement was not a "typical closing statement," no broker fees were listed, and there was no evidence the subject was listed on the open market.

[53] Appellant's representative testified at the BOR that the transaction was arm's-length. He stated there was no prior relationship with the owner, and he speculated there were no commissions paid because it was purchased directly from the owner. The parcel card corroborates the sale price of $2,500. Accordingly, appellant met its initial "relatively light burden" with the purchase documents, which shifts the burden of rebuttal to the BOR. See *Lunn*, supra, at ¶ 14. The BOR did not offer rebuttal evidence. Instead, it argued it could not verify the details of the transaction. However, there is no requirement that a proponent of a sale offer explanatory testimony in excess of the sales documents.

[54] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 05905 0062

TRUE VALUE

$2,500

TAXABLE VALUE

$880

Tri Corner Apartments LLC (2310 Wayne)

[55] The auditor valued this property at $34,340 for tax year 2017, and appellant filed a decrease complaint requesting a value of $21,000 citing a May 2014 sale. The BOR rejected the sale as too remote, and we agree. See *Akron City Schools,* supra, at ¶¶ 12-17. Pepzee's representative testified about rents and the condition of the subject but submitted no appraisal showing the sale price remains competent evidence of value. We likewise reject appellant's unadjusted sales data, and find insufficient evidence to justify a reduction in value.

[56] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 03510 0010

TRUE VALUE

$34,340

TAXABLE VALUE

$12,020

236 Sandalwood LLC

[57] The county auditor valued this property at $28,220 for tax year 2017, and appellant filed a decrease complaint requesting a value of $6,800 citing a May 2009 sale. We considered this sale in a prior case concerning tax year 2013. See *236 Sandalwood LLC v. Montgomery Cty. Bd. of Revision*, (Nov. 9, 2015), BTA No. 2010-3763. In that case, we rejected the sale as distressed. We also found the sale was too remote to be competent evidence of value for tax year 2013. We see no reason to revisit our prior holding that this sale was distressed. We hold the sale is also too remote to constitute competent of value for tax year 2017. See *Akron City Schools*, supra, at ¶¶ 12-17.

[58] In the absence of any other probative evidence of value, we order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 11207 0055

TRUE VALUE

$28,220

TAXABLE VALUE

$9,880

954 Sherwood LLC

[59] The county auditor valued this property at $25,620 for tax year 2017, and appellant filed a decrease complaint requesting a value of $24,100 citing a July 2009 sale. The BOR rejected the sale as too remote; we

do as well. See *Akron City Schools,* supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick,* supra. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[60] We order the property to be assessed in accordance with the following

values: PARCEL NUMBER R72 11307 0030

TRUE VALUE

$25,620

TAXABLE VALUE

$8,970

3931 Casper LLC

[61] The auditor valued this property at $17,490 for tax year 2017, and appellant filed a decrease complaint requesting a value of $14,328 citing a July 2010 sale. The BOR rejected the sale as too remote; we do as well. See *Akron City Schools,* supra, at ¶¶ 12-17. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[62] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER H333009120118

TRUE VALUE

$17,490

TAXABLE VALUE

$6,120

1331 Amhurst LLC

[63] The auditor valued this property at $56,100 for tax year 2017, and appellant filed a decrease complaint requesting a value of $20,000 citing a February 2011 sale. The BOR rejected the sale as too remote; we do as well. See *Akron City Schools,* supra, at ¶¶ 12-17. Pepzee's representative testified about rents and the condition of the subject but submitted no appraisal showing the sale price remains competent evidence of value. We likewise reject appellant's unadjusted sales data. See *Copp,* supra.

[64] The BOR reduced the value to $37,420 using a gross income multiplier. We must reject that value because it is not supported by evidence in the record. See *Sapina,* supra, *at* ¶ 35. The record is devoid of any analysis or data supporting the gross income multiplier used. Accordingly, we see no reason to deviate from the auditor's value. See *Jakobovitch,* supra, *at* ¶ 12.

[65] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 07206 0007

TRUE VALUE

$56,100

TAXABLE VALUE

$19,640

OHIO BOARD OF TAX APPEALS

WILLIAM AND PAMELA TAYLOR, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-468 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM AND PAMELA TAYLOR
OWNER
4311 WITHROW RD
HAMILTON , OH 45011-8434

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant taxpayers challenge decisions issued by the board of revision ("BOR") denying their request for remission of real property tax late payment penalties from the first half of 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and a motion to dismiss filed by the county appellees, which we construe as a motion to limit jurisdiction.

We first address the county appellees' motion to limit this board's jurisdiction. In their appeal, appellants claimed that the BOR improperly denied their request for remission of late payment penalties regarding three parcels: H4100-034-000-018, N6110-026-000-023 and N6110-026-000-049. The county appellees filed a motion seeking to limit the board's jurisdiction only to parcel number N6110-026-000-023, asserting that the appellants failed to file applications for remission with the county with respect to the remaining parcels. This board denied the motion with respect to parcel number N6110-026-000-049 given the appellants' submission of a decision letter, but the motion to dismiss parcel number H4100-034-000-018 remains outstanding.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the BOR within thirty days after notice of the decision of the county BOR is mailed. Thus, any appeal made before the BOR properly issued a decision is premature. In this case, it appears that appellants filed an appeal to this board regarding parcel number H4100-034-000-018 without first going through the BOR process. As strict compliance with R.C. 5717.01

is essential to vest jurisdiction with this board, and since the record demonstrates that appellants filed the appeal of parcel number H4100-034-000-018 prematurely, we agree with the county appellees that we lack jurisdiction to consider the request for remission of the late payment penalty for this parcel. Accordingly, we grant the county appellees motion to limit jurisdiction, in part, and exclude parcel H4100-034-000-018 from our consideration.

We now consider the BOR's denial of appellants' requests for remission of the penalties for parcel numbers N6110-026-000-023 and N6110-026-000-049. As the appellants, the taxpayers have the burden to show that their requests were improperly denied by the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Appellants request remission of the penalties, alleging that their failure to make timely payment was due to reasonable cause and not willful neglect. Specifically, appellants maintain that they were unable to timely pay because a serious illness became a financial hardship with neither appellant working. Appellants claim that they had timely paid since 1973, were working to get bills caught up, and listed their house for sale.

Pursuant to R.C. 5715.39(C), "[t]he board of revision shall review the auditor's determination and remit a penalty for late payment of any real property taxes or manufactured homes taxes if the board determines that any of divisions (B)(1) to (5) of this section applies or if it determines that the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Despite appellants' claims of both medical and financial hardship, we find that their failure to timely pay multiple times during the preceding three years represented willful neglect rather than reasonable cause, notwithstanding their justifications for doing so. Even when only one prior incidence of late filing occurred, a taxpayer's habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause. See, e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported; *Patel v. Testa* (Apr. 29, 2014), BTA No. 2014-261, unreported. While we are sympathetic to the circumstances that led to multiple late payments, appellants have failed to demonstrate that they satisfied the prerequisites for remission of real property tax penalties set forth in R.C. 5715.39(C).

Accordingly, we hereby affirm the decision of the BOR to deny the taxpayers' requests for remission of the late payment penalties for the first half of tax year 2017 for parcel numbers N6110-026-000-023 and N6110-026-000-049.

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-268
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

INDUSTRIAL PARKWAY ENTERPRISES LLC
16000 COMMERCE PARK DRIVE
BROOK PARK, OH 44142

Entered Thursday, March 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Cleveland Metropolitan School District Board of Education appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the two subject parcels at a combined $598,500 for tax year 2016. The school board requested a hearing then waived its appearance at that hearing. We consider the appeal upon the notice of appeal, the transcript certified by the fiscal officer ("S.T."), and our hearing record ("H.R.").

Appellee Industrial Parkway Enterprises LLC ("Industrial") purchased the subject parcels, i.e., parcel numbers 028-23-015 and 028-23-023, on October 13, 2016, for $830,000, as demonstrated by its submission of the conveyance fee statement, purchase agreement, and deed. The fiscal officer valued the subject parcels at a combined $1,710,000 for tax year 2016, and Industrial filed a decrease complaint requesting the parcels be valued at $830,000 in accordance with the sale. The school board filed a counter complaint asking the BOR to retain the fiscal officer's value.

Industrial was represented at the BOR hearing by both its manager and its bookkeeper. Industrial's manager spent considerable time describing the facts of the October 2016 sale. The manager testified that Industrial purchased the subjects, industrial property, from a company called CCL Label Inc., which had moved its business operation to another city. The subjects had been on the open market for more than a year; the manager testified the subjects were listed for more than $1,000,000 combined. The manager testified Industrial had absolutely no prior business relationship with CCL Label. Both CCL Label and Industrial were represented by their own brokers. Industrial negotiated the price down to $830,000. The manager also testified the sale was purely for the real property and not for any non-real property assets. Industrial's manager further testified the building is in significant disrepair, e.g., roof problems and structural issues. The school board was represented by counsel but did not offer any witnesses.

The BOR ultimately issued a new value of $598,900. However, it is unclear why the BOR adopted that value and not the sale price of $830,000. The rationale statement on the decision states: "Board finds evidence and testimony indicates the property was the subject of a sale recent to the tax lien date." The BOR's counsel did not appear at our hearing, nor did the BOR file written argument explaining the discrepancy. The school board appealed, asking us to reinstate the fiscal officer's original value, though it has provided for explanation for its request.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"); see also *Smith v. Erie Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-466, unreported.

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). The Ohio Supreme Court has been clear a sale that postdates tax-lien date creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19.

The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. A proponent of a sale prices bears a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden by presenting a complaint coupled with purchase documents. Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, we find the October 2016 is the best evidence of value because the sale has the markings of an arm's-length transaction. Brokers represented both buyer and seller. See generally *Cincinnati City Schools*

Bd. of Edn. v. Hamilton Cty. Bd. of Revision (Dec. 5, 2018), BTA No. 2017-2110, unreported. While not essential to an arm's-length sale, this sale occurred on the open market, and the subjects had significant market exposure. See *N. Canton City Sch. Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 392, 2018-Ohio-1, ¶¶ 3-7 (market exposure time salient when determining if a transaction was arm's-length). There is no indication any party was under duress or compulsion, and the parties negotiated the sale price. See *Hemmerich Realty LLC v. Montgomery Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2072, unreported. There is also no evidence the character of the subjects changed significantly between the 2016 tax lien-date and October 2016 when the sale occurred. We note the school board offered no rebuttal evidence at the BOR hearing and waived its appearance at this board's hearing. Accordingly, we find the sale, unrebutted, is the best evidence of value. We order that value adopted.

We recognize the BOR valued the subjects at $598,500. But, we are unable to determine why the BOR adopted that value instead of the sale price. No party has explained the discrepancy. In this case, we must reject the BOR's value because we cannot find support for that value in the record. See *Sapina*, supra, at ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

We order the properties to be assessed in accordance with the following values for tax year 2016:

PARCEL NUMBER 028-23-015

TRUE VALUE

$766,710

TAXABLE VALUE

$268,350

PARCEL NUMBER 028-23-023

TRUE VALUE

$63,290

TAXABLE VALUE

$22,150

OHIO BOARD OF TAX APPEALS

BOB AURORA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-2276

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BOB AURORA
OWNER
SBM HOSPITALITY GROUP LLC
16644 SNOW ROAD
BROOK PARK, OH 44142

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BEREA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JOHN P. DESIMONE
KADISH, HINKEL & WEIBEL
1360 EAST 9TH STREET, SUITE 400
CLEVELAND, OH 44114

Entered Monday, April 1, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education moves to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v.*

Hamilton Cty. Bd. of Revision, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MOIRA PROPERTIES LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1159

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MOIRA PROPERTIES LLC
Represented by:
ALFRED D. LOBO
OWNER
2655 EUCLID HEIGHTS BLVD
CLEVELAND , OH 44106

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 687-04-019, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments.

The subject property is improved with a single-family home, which the fiscal officer initially assessed at a total true value of $105,400. Appellant filed a complaint with the BOR seeking a reduction in value to $28,000. The BOR convened a hearing, at which Alfred Lobo, appellant's sole owner and a licensed attorney, appeared to testify in support of the requested reduction. Lobo testified that he purchased the property in 2017 for $28,000 at a sheriff's auction but was unaware of the poor condition inside the home at the time. Lobo explained that he was interested in the property because he lived in the neighborhood and was concerned about potential investors. Lobo indicated that the property remained vacant at the time of the BOR hearing because he was working to make the necessary repairs, but the property was not yet habitable. Lobo submitted photographs to illustrate the subject's poor condition and written argument in support of the requested reduction. The BOR also considered a list of sales in the subject's neighborhood. The BOR issued a decision reducing the initially assessed valuation to $94,900, indicating that the evidence and testimony supported a reduction to reflect the subject's condition. From this decision, appellant filed the present appeal. Lobo again

appeared before this board to testify in support of the sale, explaining that

although it was a sheriff's sale, there were "several hundred" people present at the auction, including multiple bidders. The county appellees waived their appearance and instead relied on written argument, asserting that the sale was not arm's-length and, therefore, not reliable evidence of value. The county appellees claimed that appellant did not meet its burden on appeal and argued that the BOR's value should be retained. Appellant also submitted written argument, reiterating those made during the merit hearing.

The burden in the present appeal is on the appellant to prove its right to a reduction from the BOR's value. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Appellant seeks to meet this burden through Lobo's testimony and the presentation of evidence regarding its purchase and the condition of the property. We acknowledge that Lobo requested that this board grant judgment in favor of appellant because the county appellees waived their appearance at this board's hearing. As the Supreme Court stated in *Brown v. Levin*, 119 Ohio St.3d 335, 2008-Ohio-4081, ¶11, "the BTA has no power analogous to that of a court in a civil action to grant summary judgment ***." See also *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶21 (fiscal officer bears no burden to prove the accurancy of his valuation). Accordingly, to the extent that appellant's request seeks summary judgment in its favor, appellant's motion is not well taken and is hereby denied.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). In the present case, although Lobo purchased the subject property in June 2017 before transferring it to appellant, it is undisputed that he did so at a sheriff's auction after the property was foreclosed. This type of sale is considered a forced sale, and generally does not provide a reliable basis to value a property. See *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 458 (1997). This characterization as a forced sale is not an absolute bar, but rather creates a rebuttable presumption that the transaction was not arm's-length. See *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. In this case, however, appellant did not present sufficient evidence regarding the circumstances of the sale that would allow this board to find that it "was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." Id. at ¶43. For instance, although Lobo testified regarding the number of participants, appellant did not include any information regarding marketing information, any attempts to sell the property prior to the sheriff's auction, or other data to show that the sale was consistent with the market in which the subject is located. Accordingly, we cannot rely on the sale as competent evidence of value.

In this case, appellant also relied on evidence of negative conditions to support its requested reduction. While we acknowledge that the subject needs repairs to both the exterior and interior of the property, it is unclear as to the extent that these deficiencies affect the subject's value. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶17. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996).

Finally, we acknowledge that the BOR also considered a list of properties that had sold in the subject's neighborhood, which was included in the transcript certified to this board. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the list of sales in this record is not probative evidence of value because no party has provided evidence about the circumstances of those sales or adjusted them for differences among the properties. See *Moskowitz*, supra. As such, we find that these sales do not provide a basis for this board to independently determine a value for the subject property.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. Additionally, we note that the BOR reduced the value of the property after considering the evidence and testimony regarding the subject's condition. Thus, it appears that the BOR addressed appellant's concern that the initial value did not consider the poor condition of the property and appellant benefited from a corresponding reduction in value, the propriety of which has not been challenged

on appeal. As such, we find it appropriate in this case to retain the BOR's value. *Moskowitz*, supra, at ¶10.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$94,900

TAXABLE VALUE

$33,220

OHIO BOARD OF TAX APPEALS

JAMES M. LUKACSKO, (et. al.),

Appellant(s),

vs.

BELMONT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-924

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMES M. LUKACSKO
OWNER
71559 FAIRPOINT-SHEPHERDSTOWN RD
SAINT CLAIRSVILLE, OH 43950

For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
Represented by:
DANIEL P. FRY
PROSECUTING ATTORNEY
BELMONT COUNTY
147A WEST MAIN STREET
ST. CLAIRSVILLE, OH 43950

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is considered upon a notice of appeal filed by property owner James Lukacsko from a decision of the Belmont County Board of Revision ("BOR"). We proceed to decide the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor pursuant to R.C. 5717.01, and the record of the hearing before this board ("H.R."), at which only Mr. Lukacsko appeared.

[2] Mr. Lukacsko filed the underlying complaint pursuant to R.C. 4503.06(L)(4)(b), alleging the value of the manufactured home on parcel number 50-01213.000, identified by registration number 5005380, should be $5,000 for tax year 2018, rather than $53,840 as determined by the auditor. After filing the complaint, an employee of the auditor's office visited the property; Mr. Lukacsko testified that the auditor's office indicated the employee appraised the property at $36,840 after the visit. H.R. at 7. He indicated on his complaint that he purchased the home for $5,000 in January 2018, though he testified during the BOR hearing that he purchased both the home and the land for $13,000. He presented photographs of the poor condition of the property, including soiled and rotting floors. The BOR issued a decision valuing the property at $36,840. Such value is consistent with the value apparently communicated to Mr. Lukacsko by the county auditor's office after an employee of that office visited the property. Id. at 9.

[3] Appellant appealed to this board, requesting that the manufactured home be valued between $5,000 and $21,744. At this board's hearing, Mr. Lukacsko testified that, upon recommendation of his insurance agent, he researched the value of the home at www.NADApriceline.com. Id. at 8. He submitted the resulting report, which indicated the total value of the home, as adjusted for location, average condition, and

additional features, was $21,744.04 for January-February 2018. H.R., Ex. A at 3. Mr. Lukacsko also testified about his purchase of the property from a neighbor. H.R. at 12. He indicated the overall $13,000 purchase price was the result of negotiation and took into consideration the poor condition of the interior of the home. Id. at 13. He testified that the purchase price was a total price for both land and the mobile home; no separate allocation for the mobile home was determined at the time of the sale. Id. at 20. He asked that this board consider the value information from NADA in valuing the subject mobile home.

[4] As the appellant in this matter, the burden is on the owners "to demonstrate that the value [he advocates] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

[5] In valuing manufactured homes, auditors are to consider "its age, its capacity to function as a residence, any obsolete characteristics, and other factors that may tend to prove its true value." R.C. 4503.06(L)(1). Similar to the statute applicable to valuing real property, R.C. 4503.06(L)(2)(a) states that, if a manufactured home has been the subject of a recent, arm's-length sale, "the county auditor *shall* consider the sale price of the home to be the true value for taxation purposes." (Emphasis added.) See *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Compare R.C. 5713.03 (auditor *may* consider a recent, arm's-length sale in valuing real property).

[6] Mr. Lukacsko purchased the mobile home in mid-2017, though the title did not transfer until January 2018. H.R. at 5-6. We note that no party appears to dispute the minimal details of the sale. The auditor's property record indicates the sale of the property to Mr. Luckscko in September 2017 for $13,000. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 2016-Ohio-8075 (indicating the proponent of a sale has a relatively light burden). While the record card also shows a $13,000 sale in February 2018, Mr. Lukackso testified at this board's hearing that he had not sold the property; it is possible the notation of such sale is the result of the later transfer of title to the mobile home.

[7] In *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), the court explained that an arm's-length sale "is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." Id. at 25. Here, neither party to the sale appears to have been under compulsion to sell the property, and Mr. Lukacsko testified that the ultimate $13,000 overall purchase price was the result of back-and-forth negotiation between the parties. Although the property appears not to have been listed for sale on the open market, the Supreme Court has held that such fact does not render a sale not arm's-length. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶20. Considering the evidence before us, we find the sale of the land and mobile home in 2017/2018 for $13,000 to have been an arm's-length sale. We further find no evidence in the record to rebut the utility of the sale in valuing the subject mobile home.

[8] Having found the sale to be arm's-length, we must now determine the allocation of the sale price between the subject mobile home and the underlying land. Notably, the transfer of title to the mobile home indicates a $0 purchase price, H.R., Ex. A; none of the other sale documents indicate any allocation between land and mobile home. While Mr. Lukacsko presented information about the mobile home's potential value from NADA, the value presented in the NADA report is notably higher than the total sale price for both land and mobile home. In the absence of another method of allocating the sale price to the subject mobile home parcel, we use the ratio of the auditor's initial values for the land ($14,160), non-mobile home improvements ($4,150), and mobile home ($36,840). See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. Using such ratios, we allocate $8,680 of the overall $13,000 sale price to the subject mobile home.

[9] It is therefore the order of this board that the true and taxable values of the subject mobile home, parcel number 50-01213.000 for tax year 2018 was as follows:

TRUE VALUE

$8,680

TAXABLE VALUE

$3,040

OHIO BOARD OF TAX APPEALS

INDERBIR SINGH AND SUKHBIR AUJLA, (et. al.),	CASE NO(S). 2018-1666
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - INDERBIR SINGH AND SUKHBIR AUJLA
Represented by:
SUKHBIR AUJLA
806 ACACIA LANE
DAVIS, CA 95616

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owners Inderbir Singh and Aujla Sukhbir appeal from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the subject parcel at $85,500 for tax year 2017. Appellants argue the subject should be valued at $40,000 pursuant to a March 2017 sale. We consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified by the fiscal officer. No party filed written argument.

The fiscal officer valued the subject at $85,500 for tax year 2017, and appellants filed a decrease complaint requesting a value of $40,000. Appellants relied exclusively on a March 2017 sale. However, it seems appellants did not submit evidence of the sale to the BOR and instead relied solely on the complaint. The only "owner's evidence" certified by the BOR is a one-page email from one appellant stating they would be unable to attend the BOR hearing in person. The BOR's journal also states "no exhibits for this hearing." S.T., Ex. E. However, we do note the parcel card has essential details of the sale. S.T., Ex. C. It states appellants purchased the subject, a single family home, on March 22, 2017, for $40,000. The seller was The Scottsdale Project LLC. Id. Ultimately, however, the BOR affirmed the fiscal officer stating "[p]roperty owner did not appear and did not provide evidence to support requested value. No change."

Appellants filed an appeal with this board and, seemingly for the first time, submitted the sales documents, i.e., a settlement statement and a purchase agreement. The settlement statement shows a sale price of $40,000 from The Scottsdale Project, LLC. The purchase agreement was prepared by Rosen & Company

Incorporated ("Rosen"). While Rosen's tagline is "Auctions—Appraisals—Real Estate," it does not appear appellants purchased the subject at auction. The agreement also provides a 3% brokerage fee payable to Keller Williams Realty GC.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7. We will not rely on a BOR's determination if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

Because this case implicates a sale, we begin with the relevant law for recent, arm's-length sales. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. An arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. A sale that postdates tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25, 546, N.E.2d 932 (1989).

The Ohio Supreme Court has also made clear the proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). Upon review, we find that the transfer is adequately reflected on the county's property record card for the subject. The BOR did not address the information in the parcel card in its decision, nor did the BOR file written argument with us arguing the transaction was not arm's-length. As this board has held on multiple occasions, "evidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property." *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported. See also *Lunn*, supra; *1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported; *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 10, 2013), BTA No. 2009-Y-1596, unreported. Such is the case here as there has been no dispute as to the sale information contained on the property record card. As such, a rebuttable presumption of validity attaches to the transfer, and the burden to rebut such presumption falls upon the opponent of utilizing such sale, here, the BOR, to prove that the sale price is not indicative of value. See *Terraza 8*, supra. Again, no party does or has disputed the arm's-length nature of the sale. Therefore, we find the sale price, unrebutted, is the best evidence of value.

We order the subject to be taxed in accordance with the following values for tax year 2017:

PARCEL 735-20-001
TRUE VALUE
$40,000
TAXABLE VALUE
$14,000

OHIO BOARD OF TAX APPEALS

MICHAEL HIPPERT, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1523 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL HIPPERT
200 SUMMERSET DR.
ASHLAND, OH 44805

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, MSH Properties LLC ("MSH"), through its manager, Michael Hippert, appeals to this board from a decision of the Hamilton County Board of Revision ("BOR") determining the value of parcel 661-0001-0403-00 for tax year 2017. Mr. Hippert filed the original decrease complaint on three parcels; however, he has only appealed one of those parcels to this board. Therefore, we limit our review to that parcel. We now consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and the auditor's written argument.

[2] The subject parcel is vacant commercial land. While appellant requested to have this appeal placed on this board's small claims docket, we find the appeal is ineligible for the small claims docket. R.C. 5703.021(B), which incorporates R.C. 319.302, bars a case from our small claims docket if the subject is used primarily for a "business activity." A "business activity" is broadly defined to include all uses of real property except the following:

> "[F]arming; leasing property for farming; occupying or holding property improved with single-family, two-family, or three-family dwellings; leasing property improved with single-family, two-family, or three-family dwellings; or holding vacant land that the county auditor determines will be used for farming or to develop single-family, two family, or three-family dwellings."

Accordingly, vacant commercial land is only eligible for small claims when "the county auditor determines [the subject] will be used for farming or to develop single-family' two family, or three-family dwellings."

However, it appears the auditor has made no such determination. See Property Record Card at 1 (listing property as commercial. We, therefore, consider this case through our regular docket.

[3] The auditor valued the subject at $144,130 for tax year 2017, and appellant filed a decrease complaint requesting a value of $65,000. The St. Bernard-Elmwood Place School District Board of Education filed a counter complaint asking the BOR to affirm the auditor's value. MSH purchased the subject in January 2006 from a land bank. Parcel Card at 4. Mr. Hippert, who participated in our hearing, stated MSH has not developed or improved the subject.

[4] Mr. Hippert described the subject in detail at the BOR hearing. MSH is a trucking company with a warehouse directly next to the subject. The subject is surrounded on the three remaining sides by a bridge, railroad tracks, and a creek. On the complaint, Mr. Hippert wrote "only half the property is usable; it does not have its own entrance off McGregor; trucking is very limited because of the obstruction access approaching from the West (bridge side), East side (across rr tracks) entrance does not exist because tracks are set too high which prohibits trucks from crossing." S.T., Ex. A at 1. MSH is attempting to sell both the subject and the warehouse for $595,000. S.T., Ex. F. As of the BOR hearing, MSH had on open offer on both the subject and the warehouse for $500,000. However, Mr. Hippert testified he is unlikely to accept the offer. Mr. Hippert testified that the limited access is caused, to some degree, by the fact that it is difficult for large trucks to access the subject. MSH did not have the subject appraised. Instead, Mr. Hippert submitted an opinion of value of $65,000 largely because he alleged auditor values dropped approximately 20% on nearby parcels. Accordingly, he believed the subject's value should be decreased proportionally. He also argued the subject is overvalued because of the limited access for trucks.

[5] Emmitt Ford, a county appraiser, testified at the BOR hearing and presented his report. He did not develop a full appraisal. Instead, he testified the auditor's office reviewed the complaint but did not feel the reduction was justified. The school board maintained its position that the auditor's value should be affirmed. The BOR did ultimately affirm the auditor's value, and MSH appealed. The auditor filed written argument asking us to affirm the BOR.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

[7] MSH purchased the subject in 2006. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, MSH purchased the subject more than 24 months before the tax-lien date. No party has asked us to adopt the sale price, and we find no evidence in the record to show the 2006 sale "to be a reliable indication of value despite the passage of time." Id.

[8] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133

Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile data. An appraiser adjusts for the differences between the comparables and the subject. An appraiser may also use other recognized methods of valuation such as the cost and income capitalization approach. See *Gallick*, supra.

[9] Here, MSH did not obtain an appraisal. Instead, Mr. Hippert argued that 1) nearby parcels received a value decrease from the auditor, which warrants a decrease for the subject; 2) the subject has negative characteristics, i.e., limited access; and 3) his subjective opinion of value was the subject should be valued at $65,000. We do not find those arguments or evidence to be a substitute for a qualifying appraisal. The Ohio Supreme Court has been clear that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). There is no evidence in the record about the valuation of those nearby parcels, and there is indeed no evidence that those nearby parcels are identical to the subject.

[10] We likewise reject the argument the subject's value should be lowered because of limited access. Again, we note Mr. Hippert testified it is difficult, not impossible, for large trucks to access the lot. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties." *Gallick, supra*, at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Gides v. Cuyahoga Cty. Bd. of Revision, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7.* Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on the evidence of the subject's negative characteristics to adjust the subject's value.

[11] We must also reject the subjective opinion of Mr. Hippert. While an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported. Here, that subjective opinion of value was not supported or corroborated by verifiable evidence.

[12] Having disposed of MSH's evidence, we find MSH has failed to meet its burden, and we concur with the BOR's decision that the auditor's initial value should be maintained. For tax year 2017, we order the property to be valued in accordance with the following values:

PARCEL 661-0001-0403

TRUE VALUE

$144,130

TAXABLE VALUE

$50,450

OHIO BOARD OF TAX APPEALS

JACKSON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1323
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JACKSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

NEW HORIZONS GENERAL BUSINESS & PROPERTIES, LLC
4735 BELPAR STREET
CANTON, OH 44718

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Jackson Local Schools Board of Education appeals a decision of the Stark County Board of Revision ("BOR"), which reduced the value of parcel 1619803 from $987,900 to $750,000 for tax year 2017. The school board asks this board to reinstate the auditor's valuation. We now consider this appeal upon the notice of appeal, the transcript certified by the BOR, and the parties' written arguments.

[2] Appellee New Horizons General Business and Properties, LLC ("New Horizons") owns the subject property, office space in Canton, Ohio. New Horizons' owner, Dr. Ike Nkanginieme, operates his medical practice in one portion of the building and rents the other portion to tenants. Dr. Nkanginieme testified to the BOR that New Horizons placed the property on the market in 2017 because it had difficulty finding suitable tenants. A prospective buyer signed a purchase agreement with New Horizons in January 2018 for a sale price of $850,000. However, Dr. Nkanginieme testified the deal was never closed because the

prospective buyer felt the building needed too many repairs. In February 2018, New Horizons decreased the listing price from $1,100,000 to $950,000. Still unable to sell, it decreased the listing price from $950,000 to $750,000 in July 2018.

[3] New Horizons' complaint asked the property be valued at $600,000, and the school board filed a countercomplaint asking the BOR to affirm the original $987,000 valuation. In support of its position at the BOR hearing, New Horizons relied on the unsuccessful sale, testimony about needed repairs, and general opinion testimony of Dr. Nkanginieme. New Horizons did not obtain an appraisal. The BOR granted a partial reduction to $750,000, and it orally stated it picked that value because that was the "current listing price." The BOR made no other findings about the market or condition of the property.

[4] The school board appealed to us arguing the BOR's reduction is not supported by evidence. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶¶ 15, 22. We will not rely on a BOR's determination if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"). We also determine the weight and credibility of the evidence. *Cardinal Fed. S. &. L. v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 13 (1975).

[5] Before discussing the BOR's decision in detail, we note that we agree with the school board that the *Bedford* rule is inapplicable here. An appealing party may generally carry that party's burden by showing the BOR "erred when it reduced a property's value from the amount first determined by the auditor." *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, ¶ 9. A narrow exception to that general principle, however, is the so-called "*Bedford* rule" announced in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio S.3d 449, 2007-Ohio-5237. Under the *Bedford* rule, "when the BOR adopts a new value based on the owner's competent evidence, it has the effect of 'shifting the burden of going forward with evidence to the board of education on appeal to the BTA.'" *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶ 16. When the *Bedford* rule applies, the school board must do more than rely on the auditor's valuation; the school board must "come forward with affirmative evidence of the subject property's value." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 2018), BTA No. 2017-1707, unreported. Here, though, the *Bedford* rule is inapplicable because the owner did not present "competent evidence" of value to the BOR, as we explain in greater detail below. *Orange City Schools*, supra,at 4. Therefore, the school board argues it should be able to rely on the auditor's valuation as the default value. We agree.

[6] Turning to the merits, we reaffirm that unsuccessful sales are not competent evidence of value. See, e.g., *Modern Dev. Corp. v. Franklin Cty. Bd. of Revision* (July 14, 2016), BTA No. 2015-1847, unreported. In *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397, 400 (1997), the Ohio Supreme Court held "unaccepted offers to purchase do not constitute a sale price and so raise no such presumption" like the rebuttable presumption raised by an actual recent arm's-length sale. The Ohio Supreme Court has said this board is not required to "assign any weight" to unsuccessful attempts to sell property. Id. at ¶ 17-18. At least one appellate court has said, in a decision affirming us, that a "listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." *Kaiser v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, at ¶ 20; see also *Soc. Natl. Bank v. Carroll Cty. Bd. of Revision* (Apr. 19, 1996), BTA No. 1994-M-454, unreported; *Brown v. Hamilton Cty. Bd. of Revision* (Apr. 19, 2011), BTA No. 2010-A-2950, unreported; *Matthews v. Hamilton Cty. Bd. of Revision* (Feb. 22, 2008), BTA No. 2006-V-820, unreported. Accordingly, evidence of the unsuccessful sale is not competent evidence of value, and the BOR erred in decreasing value based on a listing price.

[7] We find the alleged defects associated with the subject property, i.e., needed repairs, to be equally unavailing. Conclusory statements about needed repairs are insufficient to justify a reduction. As the Supreme Court stated in *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996), "[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value." A party must do more than just demonstrate the existence of negative factors; it must also quantitatively demonstrate the impact such factors have on the property's value. *Germano v. Cuyahoga Cty. Bd. of Revision* (June 19, 2018), BTA No. 2017-1468, unreported. In the absence of an appraisal quantifying the effect of any adverse factors on the value of the property, we find New Horizons' evidence insufficient to justify the reduction.

[8] As noted above, New Horizons relied on the opinion testimony of Dr. Nkanginieme; it offered no expert appraisal testimony to the BOR or this board. While an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported. Dr. Nkanginieme testified to the BOR that he felt the property was overvalued compared to the market, but Dr. Nkanginieme is not an appraiser, nor did he provide any market data to support his conclusion. Ohio law "generally requires a real-property valuation to ascertain 'the exchange value' of the property." *Johnston Coca-Cola Bottling Co. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870. In the absence of a qualifying sale, an appraisal by a person with expertise is necessary to determine that value. *Park Invest. Co.*, supra, at 412; *Snyder v. Hamilton Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-6, unreported. As we have often stated, "the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill, and ability demonstrated by the appraiser. *Snyder*, supra, at 7-8. See also *Nkanginieme v. Ohio Dept. of Medicaid*, 10th Dist. Franklin No. 14AP-596, 2015-Ohio-656 (involving a credible allegation of fraud determination). Accordingly, because Dr. Nkanginieme is not an appraiser, we are unable to conclude his opinion is competent evidence of the subject's value for tax year 2017.

[9] Because we find no probative or competent evidence to support the BOR's value or New Horizons' proposed value, we see no reason to depart from the auditor's original value. *Sapina*, supra. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 1619803

TRUE VALUE

$987,900

TAXABLE VALUE

$345,770

OHIO BOARD OF TAX APPEALS

GREGORY P. DINGESS, (et. al.), Appellant(s), vs. LICKING COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1149 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GREGORY P. DINGESS
2855 MINK STREET
JOHNSTOWN, OH 43031

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
PAULINE O'NEILL
ASSISTANT PROSECUTING ATTORNEY
LICKING COUNTY
20 SOUTH SECOND STREET
P.O. BOX 830
NEWARK, OH 43058-0830

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 037-111990-00.001, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject is a roughly 2.8-acre parcel without road frontage but situated adjacent to three other parcels owned by appellant that are improved with single-family homes, including his personal residence. The auditor initially assessed the subject's total true value at $34,500. Appellant filed a complaint with the BOR seeking a reduction in value to $8,200. At the BOR hearing, appellant argued that the subject has no independent value because it is not accessible from the road. The auditor explained to appellant that its value is based, in part, on the surrounding parcels because they share common ownership. The BOR issued a decision maintaining the initially-assessed valuation, which appellant appealed to this board. This board convened a hearing, at which appellant appeared and submitted a letter and comparable market analysis from a realtor who indicated that the subject property's value is $18,000 as a non-buildable lot. The county appellees relied on testimony from a staff appraiser in the auditor's office, who indicated that the subject property was valued with an adjacent parcel as a single economic unit. As such, rather than considering the subject as one parcel without frontage, it considered the parcels together as roughly five acres improved with a single-family home, then allocated the land value between the two parcels. The staff appraiser also presented several comparable sales and asserted that they support the auditor's value at roughly $12,000 per acre.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9.

R.C. 5713.041 directs the auditor to classify each separate parcel of real property "according to its principal, current use. Vacant lots and tracts of land upon which there are no structures or improvements shall be classified in accordance with their location and their highest and best probable legal use." Here, although the subject property is an unimproved lot without road frontage, the auditor determined that the subject's highest and best probable legal use is together with the adjacent parcel, which has road frontage and is improved single-family home. We find that this conclusion is supported by the record. Not only do the parcels share common ownership, but appellant testified that he resides in the home on one of the adjacent parcels and utilizes the subject property as a yard. Accordingly, we reject appellant's argument that the subject parcel should have been valued without regard for the surrounding parcels. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254, ¶3, fn.1 (explaining that it is appropriate to value property as an "economic unit" when land and improvements from a combination of parcels are used for mutual economic benefit).

As we review the evidence submitted by appellant, we find that he has failed to present competent and probative evidence that establishes a value different than that initially assessed by the auditor. We acknowledge appellant's expertise and competence to offer an opinion of value as the owner of the subject real property, but we find that he has not provided adequate support for his opinion. *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight."). Furthermore, the letter and sales data from the realtor do not provide a reliable basis upon which this board may reduce the value of the subject property. At the outset, we note that this board does not accord the weight to a realtor's opinion of value as we would a qualifying appraisal of the subject property. This board has rejected opinions from other realtors because while they may have extensive training in their field and develop some appraisal expertise, as a group, real estate sales people "typically do not consider all the factors that professional appraisers do." *Poenisch v. Franklin Cty. Bd. of Revision* (Jan. 23, 2015), BTA No. 2014-961, unreported, citing The Appraisal of Real Estate (13th Ed.2008). Thus, we do not give any weight to the letter in determining the subject's value. Even if the data was compiled and analyzed by an appraiser, the letter constitutes unreliable hearsay because it was presented without testimony from its author, and the value conclusion would not be given any weight in our analysis. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21. Additionally, we find that the unadjusted sales data is insufficient for appellant to meet his burden. See *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733, ¶7 (holding that the BTA did not abuse its discretion when it retained the BOR's value and rejected the owner's opinion of value based, in part, on "sales of other properties without providing sufficient evidence to the BTA about the circumstances of those sales or the similarities of those other properties to his own.").

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$34,500

TAXABLE VALUE

$12,080

OHIO BOARD OF TAX APPEALS

PINNACLE REAL ESTATE VENTURES LLC, (et. al.),	CASE NO(S). 2018-1082
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LUCAS COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - PINNACLE REAL ESTATE VENTURES LLC
Represented by:
STEVE LEBLANC
PINNACLE REAL ESTATE VENTURES LLC
2015 ROLLING KNOLLS CT.
HUNTINGTON, MD 20639

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
ELAINE B. SZUCH
ASSISTANT PROSECUTING ATTORNEY
LUCAS COUNTY
711 ADAMS, SUITE 250
TOLEDO, OH 43604

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Pinnacle Real Estate Ventures LLC ("Pinnacle") appeals to this board from a decision of the Lucas County Board of Revision ("BOR") determining the value of parcel 02-21353 for tax year 2017. Pinnacle did not request a hearing with this board, and no party filed written argument. We, therefore, consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified by the auditor.

Pinnacle filed a decrease complaint on two parcels—one being the subject—claiming both properties have been "uninhabitable since date of purchase." S.T., Ex. A at 1. Pinnacle reported it was renovating the properties to "bring them up to code and to a livable condition." Id. Pinnacle also noted a June 2017 sale for $50,000. Id. The BOR sent a hearing notice, but Pinnacle did not send a representative to the hearing. S.T., Exs. D at 1, G at 1. Pinnacle sent no additional evidence for the BOR to consider. Id.

The BOR reduced the subject's value from $62,700 to $47,600. Reading together the parcel card and the BOR notes, it seems likely the BOR's figure is based on an allocation of the June 2017 sale of four parcels, including the subject, for $70,000. Pinnacle reported a sale price of $50,000 on the decrease complaint. Pinnacle appealed the BOR's decision on the subject parcel but not the BOR's decision on the second parcel.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We need not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"); see also *Smith v. Erie Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-466, unreported.

A recent, arm's-length sale is the best evidence of value. *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* , 175 Ohio St. 410 (1964). We find the record is generally unclear about the nature of the June 2017 sale. The parcel card indicates Pinnacle purchased four parcels, including the subject, in June 2017 for a combined $70,000. Pinnacle's complaint states the sale price was $50,000 for two parcels. In *Dauch v. Erie Cty. Bd. of Revsion*, 149 Ohio St.3d 691, 2017-Ohio-1412, ¶ 18, the Ohio Supreme Court reaffirmed "basic documentation of sale" can be as little as a conveyance fee statement and the property record card where "there is no real dispute about the basic facts of a sale." However, in this case, we are unable to determine the basic facts of the sale. Pinnacle did not submit a conveyance fee statement, and the parcel record card does not match the complaint. We cannot effectively review the sale as we are required to do without those basic facts. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. Without such basic evidence, we cannot conclude the June 2017 sale is a facially qualifying one, which ordinarily creates a rebuttable presumption of value. See *Lone Star v. Franklin Cty. Bd. of Revision,* 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19.

Now to the BOR reduction. We are mindful of our duty to determine the subject's value independently. *Lombard v. Butler Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-600, unreported. Here, we are unable to replicate the BOR's value and, therefore, must reject it. *Sapina*, supra, at ¶ 35. We specifically note we are unable to determine why the BOR allocated the sale price to two parcels instead of the four parcels included in the sale. Accordingly, we see no reason to depart from the auditor's original value.

It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 02-21353

TRUE VALUE

$62,700

TAXABLE VALUE

$21,950

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-356
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

ANTHONY PANZERA
1601 W. FIFTH AVE., BOX 211
COLUMBUS, OH 43212

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-034509-00, 010-052469-00, 010-065419-00, 010-065619-00, 010-077223-00, and 010-077229-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject properties are located in the same neighborhood on the west side of Columbus and are improved with a residential duplex, each unit containing three bedrooms and one bathroom. The auditor initially assessed each subject's total true value at $115,300, $127,600, $125,700, $145,400, $129,800, and $131,300, respectively. The appellee property owner, Anthony Panzera, filed a complaint with the BOR seeking reductions to a range of values from $52,00 to $65,000. The BOE filed a countercomplaint in support of maintaining the auditor's values. The BOR convened a hearing, at which Panzera submitted a list of properties that were sold in the subject properties' neighborhood and were of similar size and

condition to the subject properties. Panzera indicated that he considered only arm's-length sales and removed any distressed sales from his list. Panzera testified that he had personal knowledge of one of the sales because he was involved in the transaction, but the BOE objected to the other sales as hearsay because he did not have such knowledge of those transactions. Panzera also described the condition of each property, contract rental rates, and occupancy at each property. In addition to the evidence submitted by Panzera, the BOR performed independent research, including other sales in the neighborhood. The BOR concluded that the contract rents in place were at market rates and applied a gross rent multiplier ("GRM") that it deemed appropriate for the properties. The BOR then issued a decision reducing the initially assessed valuation values, though not to the values requested. From this decision, the BOE filed the present appeal, asserting that the reductions were not supported, and the auditor's values should be reinstated. This board convened a hearing, at which the BOE relied on the record and legal argument. Panzera again discussed his experience and challenges in the area, submitting income and expense information for the subject properties. Panzera contends that the data does not support the values initially determined by the auditor, which the BOE seeks to have reinstated on appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. We recognize that under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. The court has emphasized, however, that this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7 ("*Chess*"), citing *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381 ("*Olentangy Crossing*"), ¶15, 22; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶13, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, ¶17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996). See, also, *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, ¶19.

The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). The court has further explained that this does not necessarily require submission of an expert appraisal when a complainant has not demonstrated a qualifying sale. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶12. In this case, neither party has alleged that the properties recently transferred or presented qualifying appraisal reports for this board to consider. Panzera relies on the sales data and his testimony regarding the subjects' income and condition, while the BOE relies on its legal argument and cross-examination, having submitted no independent evidence of value. The record also contains evidence considered by the BOR, specifically additional sales data and a sheet of gross rent multipliers.

We begin our review with the evidence submitted by appellant and find that he has failed to present competent and probative evidence that establishes a particular value. Panzera has developed an opinion of value not only as the owner and manager of the properties, but also based on his experience as a realtor. This board has rejected opinions from other realtors because while they may have extensive training in their field and develop some appraisal expertise, as a group, real estate sales people "typically do not consider all the factors that professional appraisers do." *Poenisch v. Franklin Cty. Bd. of Revision* (Jan. 23, 2015), BTA

No. 2014-961, unreported, citing The Appraisal of Real Estate (13th Ed. 2008). As an owner, however, Panzera has the expertise and competence to offer an opinion of value as the owner of the subject real properties, but in order for this board to adopt his opinion of value, Panzera must provide adequate support for his opinion. *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

We first look to the comparable sales submitted by Panzera and the BOR, and observe that none of the properties have been adjusted to relate the sale prices to the subject properties. In the absence of an appraisal which analyzes such data, the submission of raw sales information is normally considered insufficient to demonstrate value since the trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). See, also, *Schutz*, supra, at ¶16. Although Panzera indicated that the properties that he provided are comparable to the subject both physically and in terms of location, it is unclear as to whether any other adjustments may be necessary, for instance the time or circumstances of the comparable sales or the presence of a garage. Thus, this raw sales data alone provides little utility to establish the value of the subject.

We further find that the evidence offered by Panzera with respect to the condition of a property or quality of the tenants does not support a decrease in its value without adequate evidence of the specific impact that these negative factors have on the property. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz*, supra, at ¶17. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) (emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value); *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 100830, 2014-Ohio-4086, ¶17 ("The photographs Gides submitted are similarly deficient. Without testimony to establish how the defects represented in the photographs affect value, there is no basis to determine that the value of the property is less than that currently assessed."). Accordingly, we cannot rely on the evidence of the subject's negative conditions to adjust the subject's value.

To reach its decision, the BOR applied a GRM to the contract rental rates at each subject, which the BOE has argued was inappropriate. Although this GRM data was first considered by the BOR for use in its deliberations and was not discussed during the BOR hearing, we must consider its reliability and decide the appropriate weight to accord it. *Chess*, supra, at ¶9. The court indicated that while the BOR may elicit evidence from consultants or staff appraisers, if a BOE appeals a BOR reduction to this board, "the board of revision as an appellee can be called upon to account for the manner in which it determined value." Id. at ¶9. For several reasons, we find that the BOR's application of a GRM should be accorded no weight in our value determination.

First, the record lacks the evidence to conclude that the rental rates in place on the subject properties conformed to the market. See, generally, *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996) ("[A]n appraiser may employ actual income as reduced by actual expenses if both amounts conform to market."). Second, and more importantly, we cannot review or replicate the basis for the BOR's GRM. The data upon which the BOR relied to conclude to its GRM and the comparability of the properties and the subjects were not discussed at the BOR hearing and no individual involved in the preparation of this report provided testimony regarding his or her methodology. Based upon the limited information that was provided in the transcript, it appears that the BOR multiplied the stated monthly income by 71.37, but we are unable to locate this number on the spreadsheet provided, let alone discern whether the properties (or property) from which it was derived are similar to the subject properties, including their expense ratios, and the basis for their reported rental income. The Appraisal of Real Estate (14th Ed. 2013) explains that a GRM may be used to determine a property's value by comparing the

income-producing characteristics of properties. It goes on to caution, however, that appraisers must be careful when attempting to employ this approach because, among other reasons, "[p]roperties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes." Id. at 507. In this case, due to the absence of information in the record, we are unable to review the probative character of the GRM analysis and cannot conclude that it constitutes competent and probative evidence of value. As such, we reject this evidence and exclude it from our analysis. See *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845 (affirming this board's rejection of an effective gross income multiplier within the sales comparison approach).

Accordingly, in this case, we find that both the raw sales data and the GRM analysis are not probative evidence of value and are, therefore, unreliable. Furthermore, we find that the BOR's decision relying on this evidence was not supported and we find no competent and probative evidence in the record that would allow us to independently determine value for the subject properties, other than that first determined by the auditor. Under these circumstances, this board may properly reinstate the auditor's values. See *S.-W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Crossing*, supra, at ¶20 (where the record does not contain sufficient evidence to perform an independent valuation of the property, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of the evidence in the record, we find that the true value of the subject properties is best reflected by the value initially determined by the auditor.

It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2017, were as follows:

PARCEL NUMBER 010-034509-00

TRUE VALUE

$115,300

TAXABLE VALUE

$40,360

PARCEL NUMBER 010-052469-00

TRUE VALUE

$127,600

TAXABLE VALUE

$44,660

PARCEL NUMBER 010-065419-00

TRUE VALUE

$125,700

TAXABLE VALUE

$44,000

PARCEL NUMBER 010-065619-00

TRUE VALUE

$145,400

TAXABLE VALUE

$50,890

PARCEL NUMBER 010-077223-00

TRUE VALUE

$129,800

TAXABLE VALUE

$45,430

PARCEL NUMBER 010-077229-00

TRUE VALUE

$131,300

TAXABLE VALUE

$45,960

OHIO BOARD OF TAX APPEALS

DONALD LEE MEEKS, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1897

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DONALD LEE MEEKS
Represented by:
DONALD MEEKS
2745 CARROLL
CINCINNATI, OH 45238

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

In this small claims case, Donald Lee Meeks appeals from a decision of the Hamilton County Board of Revision ("BOR") valuing parcel 550-0133-0151-00 for tax year 2017. The auditor has filed a motion to dismiss alleging appellant failed to comply with R.C. 5717.01. R.C. 5717.01 requires an appealing party to file their notice of appeal with both this board *and* the BOR "within thirty days after notice of the decision *** is mailed." The BOR mailed its decision on October 9, 2018; therefore, appellant had until November 8, 2018, to file his notice of appeal with both this board and the BOR. While appellant did file his notice of appeal timely with this board, the auditor alleges appellant did not file the notice of appeal with the BOR until January 2, 2019. In support, the auditor's motion contains a certified statement from the BOR's clerk stating the BOR did not receive the notice of appeal until January 2, 2019. The auditor filed his motion to dismiss on January 4, 2019. At our small claims hearing, appellant confirmed he did not timely serve the BOR.

In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals.*** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal."

Upon review of the record, the motion, and appellant's statements at this board's hearing, this board finds

that appellant failed to file the notice of appeal with the BOR. Accordingly, the motion is granted, and this matter is dismissed. See *Schmidt v. Hamilton Cty. Bd. of Revision* (Nov. 23, 2018), BTA No. 2018-626, unreported.

OHIO BOARD OF TAX APPEALS

KAUFFMAN VINE LLC, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1650

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KAUFFMAN VINE LLC
Represented by:
WAEL SAFI
6607 VILLAGEFIELD DR.
MASON, OH 45040

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, April 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Kauffman Vine LLC ("Kauffman") appeals from a decision of the Hamilton County Board of Revision ("BOR") determining the value of parcel 094-0008-0239-00 for tax year 2017. Kauffman did not request a hearing with this board. We, therefore, consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and the parties' written arguments.

Before addressing the merits, we acknowledge Kauffman elected to have this case heard through our small claims docket. However, the subject is vacant commercial land, which is ineligible for the small claims docket. R.C. 5703.021(B), which incorporates R.C. 319.302, bars a case from our small claims docket if the subject is used primarily for a "business activity." A "business activity" is broadly defined to include all uses of real property except the following:

> "[F]arming; leasing property for farming; occupying or holding property improved with single-family, two-family, or three-family dwellings; leasing property improved with single-family, two-family, or three-family dwellings; or holding vacant land that the county auditor determines will be used for farming or to develop single-family, two family, or three-family dwellings."

Accordingly, vacant land is only eligible for small claims when "the county auditor determines [the subject] will be used for farming or to develop single-family' two family, or three-family dwellings." However, it

appears the auditor has made no such determination. See Parcel Card at 1 (listing property as commercial); see generally Auditor's Br.; DTE 3 (stating case is not eligible for small claims). We, therefore, consider this case through our regular docket. The auditor valued the subject at $55,760 for tax year 2017, and Kauffman filed a decrease complaint requesting a value of $25,000 in accordance a December 2017 sale. BOR Ex. A. at 1. The complaint also stated the following:

> "The market value and purchase price of $25,000 was determined based on the value of two separate Real Estate agents representing the buyer and seller. The value is driven by the lack of development in the immediate and surrounding areas north of Liberty St. This lot is also located on a one way street with no curb cut and from a developer standpoint is not considered buildable given the cost of construction relative to the market value of the structure that would be built." S.T., Ex. A.

Kauffman submitted the settlement statement to the BOR. S.T., Ex. F. The settlement statement confirms Kauffman purchased the subject from Northside Revitalization, LLC, for $25,000. The BOR set a hearing for September 20, 2018, but Kauffman did not send a representative or any witnesses. The auditor argues that Kauffman "had seven (7) months to prepare before the actual scheduled BOR hearing date on September 20, 2018. In that time Appellant provided the BOR with only a HUD Settlement Statement dated November 28, 2017 ***." Auditor's Br. at 2. The BOR ultimately rejected the sale because it said it could not confirm the sale was arm's-length. The BOR's speaking member also noted the settlement statement did not list a broker commission, and he stated no witnesses were present to testify to the condition of the subject as of the tax-lien date. Kauffman appealed. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. We will not rely on a BOR's determination if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

Because this case implicates a sale, we begin there. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. An arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). A sale that postdates tax-lien date also creates a rebuttable presumption of value. *See Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19.

The Ohio Supreme Court has also made clear proponent of a sale bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet the initial burden with basic purchase documents such as a settlement statement. See id. at ¶ 15 (no additional testimony is generally necessary). The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially qualifying sale, the burden shift to any opposing party to rebut the presumption. Id. Here, *Lunn* requires us to find the December 2017 sale is facially qualifying. We note the facts of *Lunn* are substantially similar to the facts of this case. In *Lunn*, the property

owner filed a valuation complaint along with sales documents. Id. at ¶ 15. The Supreme Court made clear that such evidence is sufficient to present a facially valid sale and no explanatory testimony is necessary to authenticate the documents. Id. at ¶¶ 15-16. It held "the Rules of Evidence do not strictly apply in administrative tax proceedings." Id. Here, Kauffman provided the settlement statement with the complaint, which shows the essential details of the sale, e.g., the seller, the price, the sale date. We note the basic facts of the sale are confirmed by the parcel card. We also note Kauffman's complaint alleges both buyer and seller were represented by brokers during negotiations.

Neither county appellee affirmatively argues this sale was not arm's-length. Instead, the county appellees argue Kauffman must show more evidence to satisfy its burden. See Appellees' Br. at 1-2. The county appellees simply say they do not know enough about the sale to credit it. That argument cannot be squared with *Lunn* because *Lunn* says a party can meet its "relatively light" burden with the complaint and

documentary evidence of the sale. Id. at ¶ 14. Kauffman presented both. See also *Zimmer v. Stark Cty. Bd. of Revision*, 5th Dist. Stark No. 2016CA00040, 2016-Ohio-7056, ¶ 30 (settlement statement coupled with complaint enough to present facially valid sale). Accordingly, we find Kauffman presented a facially qualifying sale, which shifts the burden to the county appellees.

We find the county appellees did not rebut the sale in this case. First, the county appellees did not present evidence that the subject's character changed in a way that would make this board question the utility of the December 2017 sale. The Supreme Court has been clear "when the proponent of a sale price furnishes facially qualifying evidence of the sale***it becomes the opponent's burden on rebuttal to disprove the sale's presumptive recency." *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. No party argues the subject, a vacant lot, was improved in 2017 or that some other factor significantly decreased the subject's value between the tax-lien date and the sale date.

Second, the county appellees failed to show the sale was not arm's-length. For example, the county appellees have not shown Kauffman had a preexisting relationship with the seller. They have not shown the sale was distressed. They have also failed to show Kauffman was not a "typical buyer" or the seller was not a "typical seller." See *Lunn* at ¶¶ 7, 18-21. Below, the BOR made much of the fact that the settlement statement listed no broker's commission. We know of no case, and the county appellees point to none, stating that the lack of broker's commission on the settlement statement disqualifies the sale. Moreover, even if no broker was involved, a sale does not cease to be arm's-length simply because it did not occur on an established, open market. See *N. Royalton City Sch. Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* ¸129 Ohio St.3d 172, 2011-Ohio-3092. In *North Royalton*, the Supreme Court held "the case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." Id. at ¶ 29. Accordingly, we must find no party has rebutted the presumption created by the sale and order the subject to be valued in accordance with the sale for tax year 2017.

We do note Kauffman submitted additional evidence with us, i.e., two written narratives, a broker's report, and a purchase agreement. The county appellees argue we should disregard those documents because Kauffman was required to submit the documents below in accordance with R.C. 5715.19(G). See Auditor's Br. at 2-4. We need not address that issue because this board does not consider evidence submitted outside the BOR transcript when no hearing is requested before us. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083,

unreported; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported.

We order the subject to be taxed in accordance with the following values for tax year 2017:

PARCEL 094-0008-0239-00

TRUE VALUE

$25,000

TAXABLE VALUE

$8,750

OHIO BOARD OF TAX APPEALS

533 TELFORD LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1361, 2018-2296

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 533 TELFORD LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

KETTERING CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, April 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

533 Telford ("Telford"), a limited liability company, appeals from a decision of the Montgomery County Board of Revision ("BOR"), which affirmed the auditor's valuation of parcel N64 01010 0004 at $94,910 for tax year 2017. Telford argues the subject should be valued at $60,000 per a January 2012 sale. Telford appears to have filed two duplicative appeals involving the valuation of the subject parcel for tax year 2017. See BTA Case No. 2018-2296 (filed December 31, 2018). The appeals have been consolidated for decision purposes. Ohio Adm. Code 5717-1-09. We consider this matter upon the notice of appeal and the transcript certified by the BOR.

Telford purchased the subject in March 2010 but did not record the deed until January 2012. Telford bought the subject from a company called McCormick 101 LLC for $60,000. The subject is improved with at least

one apartment building.

The auditor valued the subject at $94,910 for tax year 2017, and Telford filed a decrease complaint requesting a value of $60,000. At the BOR hearing, Telford relied exclusively on the settlement statement, which reflected a sale price of $60,000. Telford's representative testified it currently charges rent of approximately $475 per month. He also testified there are several competing rentals on the same street. It does not appear, however, that Telford relied upon the presence of competitors in its valuation calculation. Instead, it relied solely on the sale and gave information about competitors for context. While the BOR members' notes reference competing and comparable properties, it does not appear Telford submitted tangible evidence on those competing properties. The BOR ultimately affirmed the auditor's value finding the sale was too old to be competent evidence of value.

The appellant must prove the adjustment in value requested when appealing from a board of revision to us. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). A sale that occurs more than 24 months before tax-lien date is generally not recent. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio S.3d 92, 2014-Ohio-1588, ¶¶ 1-2. The proponent of an old sale must show "the sale [continues] to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Akron City School*, supra).

In the present case, Telford purchased the subject approximately five years before the relevant tax-lien date, January 1, 2017. Therefore, the sale is presumably not recent, subject to rebuttal by Telford. Having reviewed the record, we find Telford offered no probative or competent evidence that the sale continues to be a reliable indication of value despite the passage of time. See *Gallick*, supra, at 3. The only evidence Telford offered is the current rental rate, but that does not show the 2012 sale price remained a reliable indication of value as of January 1, 2017. Telford did not have the subject appraised and submitted no evidence about the market as of January 1, 2017. Accordingly, we cannot rely on the sale as competent evidence of value.

Having disposed of Telford's only evidence, we find it has failed to carry its burden and affirm the auditor's original valuation. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER N64 01010 0004

TRUE VALUE

$95,910

TAXABLE VALUE

$33,220

OHIO BOARD OF TAX APPEALS

GLORIA J. HILL, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1392 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GLORIA J. HILL
OWNER
4867 WINTON RIDGE LN
CINCINNATI, OH 45232

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, April 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Gloria J. Hill appeals from a decision of the Hamilton County Board of Revision ("BOR") that valued the subject property at $112,800 for tax year 2017. Ms. Hill's notice of appeal to us argues the subject should be valued between $87,000-$89,000, which is slightly different from the value sought in her complaint—"approximately $89,000." We consider this matter upon the notice of appeal, the transcript ("S.T.") certified by the BOR, this board's hearing record ("H.R."), the exhibit Ms. Hill submitted at this board's hearing, and the auditor's written argument.

[2] Ms. Hill purchased the subject, then unimproved, in 2001 for $8,900. She later built a residence on the subject. H.R. at 5. The county auditor valued the subject at $112,800 for tax year 2017, and Ms. Hill filed a decrease complaint requesting a value of approximately $89,000. Ms. Hill first argued to the BOR that the auditor's value should be reduced because her property has negative characteristics. Her complaint notes the subject has no garage, the driveway needs to be repaired, and gutters need to be replaced. She also testified she believed her property was overvalued compared to nearby properties. Ms. Hill testified she arrived at her opined value by adding the price she paid for the unimproved land in 2001 plus the cost she paid to build the home. She further testified nearby homes only sold for approximately $80,000. She did not submit documentary evidence or an appraisal to support her claim.

[3] In rebuttal, the auditor's appraiser filed a written report asking the BOR to affirm the auditor's value. It does not appear, however, that the appraiser developed a full appraisal. See S.T., Ex. F at 1. The report simply states that based "upon a review of this information and/or the lack thereof, the Auditor's Real

Estate Department is of the opinion that the complainant has failed to meet the burden of proof and no sufficient claim or probative documentation has been presented to warrant a change in valuation at this time." S.T., Ex. F.

[4] The BOR affirmed the auditor's value, finding Ms. Hill failed to carry her burden, and she appealed to us. At this board's hearing, Ms. Hill reiterated the same general arguments but submitted recently obtained sales data not presented to the BOR. See H.R., Ex. 1 at 1-2. While she submitted that exhibit as an "appraisal," the document is instead a residential real estate report showing sales data. Id. The report was compiled by a broker, not an appraiser, who did not testify at the BOR hearing or this board's hearing. The auditor waived his appearance but did file written argument asking us to affirm the BOR.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

[6] Ms. Hill purchased the subject in 2001 and has since improved the subject with a residence. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 195 N.E.2d 908 (1964). Ms. Hill's 2001 purchase of the parcel is not recent. See *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. A sale that occurs more than 24 months before tax-lien date is generally not recent. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio S.3d 92, 2014-Ohio-1588, ¶¶ 1-2. No party to this appeal asks us to adopt the sale price, and we find no evidence in the record to suggest "the sale [continues] to be a reliable indication of value despite the passage of time." Gallick, supra,at 3 (citing *Akron City School*, supra). Moreover, Ms. Hill testified the character of the subject has changed substantially with the addition of the residence. H.R. at 5. Accordingly, we cannot rely on the sale as competent evidence of value.

[7] In the absence of a recent sale, we turn to appellant's remaining evidence. In this case, the market data Ms. Hill presented is not a bona fide appraisal developed by a qualified appraiser. While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than simply compile sales data into a report like the report Ms. Hill offered. An appraiser adjusts for the differences between the comparables and the subject. Here, Ms. Hill's report was performed by a broker, but a broker is not an appraiser. See *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported. As we have noted before, "real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience." Id. (quoting The Appraisal of Real Estate (13th Ed.2008)). We have also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Because an appraiser did not prepare Ms. Hill's report, we cannot accept it as a qualifying appraisal.

[8] Even if we did consider the report as an appraisal, no appraiser appeared to testify before us or the BOR. We generally reject an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, supra, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to

estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Moreover, the report does not opine a value of the property as of the tax-lien date. The report seems to be effective as of December 21, 2017. To be competent evidence of value, an appraisal must generally opine a value as of the tax-lien date. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12. Accordingly, we only consider the report as unadjusted market data and give it appropriate weight.

[9] However, we do not, and have not, found unadjusted comparable sales data to be particularly helpful in our independent review. See, e.g., *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. For example, Ms. Hill's unadjusted properties vary in size, number of bedrooms, number of bathrooms, age, condition, and location. An expert's appraisal is needed to distill these variables and apply the data to the subject. See Grenny, supra,at 7-9. In *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, we said "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find" unadjusted comparable sales helpful and "does not accord them much weight." Accordingly, we do not find Ms. Hill's unadjusted comparable sales to be competent and probative of value.

[10] We are also unable to find an adjustment is warranted based upon Ms. Hill's testimony about property defects. The statement she provided about the defects was general and conclusory. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick* at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on the evidence of the subject's negative characteristics to adjust the subject's value.

[11] We acknowledge Ms. Hill's testimony about the basis for her requested value. While an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported. Ms. Hill testified she reached her opinion of value, using her knowledge of the subject, by adding the price she paid for the land in 2001 plus the cost of the amount she paid to construct the home. That information would be probative to a cost approach appraisal, but additional information would be necessary and a formal appraisal developed. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported. The cost approach seeks to determine the replacement cost of improvements plus the land value. See id. Ms. Hill's figures are insufficient for several reasons. First, she valued the land at the purchase price in 2001, which is sixteen years removed from the tax-lien date—January 1, 2017. Second, the amount she paid to build the home may or may not reflect market prices in effect in 2017. Because a formal appraisal was not developed by a qualified appraiser, we are unable to conclude her calculation is accurate.

[11] For tax year 2017, we order the property to be valued in accordance with the following

values: PARCEL 219-0050-0055-00

TRUE VALUE

$112,800

TAXABLE VALUE

$39,480

OHIO BOARD OF TAX APPEALS

466 W GRAND LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1346, 2018-1347, 2018-1348, 2018-1350, 2018-1354 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 466 W GRAND LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Wednesday, April 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These consolidated cases are considered by the Board of Tax Appeals pursuant to several notices of appeal filed by the appellants on September 13, 2018. After reviewing the notices of appeal, it appeared to us that appellants were not appealing from final decisions of the board of revision. Appellants failed to file copies of any board of revision decisions with their notices of appeal, and, instead, filed copies of notices of *hearings* to be held before the board of revision in May and August 2018. On December 13, 2018, we ordered appellants to show cause why these appeals should not be dismissed for want of jurisdiction. No party responded.

R.C. 5717.01 only permits this board to review "decisions" of a board of revision. See *Kadlec v. Cuyahoga Cty. Bd. of Revision* (Dec. 24, 2018), BTA No. 2018-1219, unreported. "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, we find that appellants have not appealed from BOR decisions and thus these matters are premature. Accordingly, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

BEHZAD VEDAIE PARTNER IN MV & AP LLC, (et. al.),	CASE NO(S). 2018-525
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BEHZAD VEDAIE PARTNER IN MV & AP LLC
Represented by:
BEHZAD VEDAIE
MV & AP , LLC
1901 E DUBLIN GRANVILLE RD
SUITE 304
COLUMBUS, OH 43229-3539

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, April 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] MV & AP LLC appeals from a decision of the Franklin County Board of Revision ("BOR") valuing parcel 010-011797-00 at $506,000 for tax year 2017. Appellant argues the value should be $250,000. On January 7, 2019, we issued sanctions against appellant barring it from introducing any new evidence due to its failure to comply with this board's order compelling it to respond to discovery requests. Accordingly, we decide the matter on the notice of appeal, the transcript certified by the auditor ("S.T."), and the appellee school board's written argument.

[2] The subject is a 0.69 acre lot improved with a two-story office building. Appellant purchased the subject in February 2013 for $225,000. The auditor valued the subject at $506,000 for tax year 2017, and appellant

filed a decrease complaint with an opinion of value at $230,000. On the complaint, appellant claimed it did not improve the subject and argued the value increased no more than 5% since the 2013 sale. The school board filed a counter complaint asking the BOR to affirm the auditor's value.

[3] The BOR held a hearing, but the sound recording was lost due to a technical issue. It appears appellant's representative testified appellant leases the building to four tenants. The record is clear appellant did not submit an appraisal nor did an appraiser testify on behalf of appellant. The BOR affirmed the auditor, and appellant filed a notice of appeal with this board. The notice of appeal lists an opinion of value of $250,000, not $230,000 as requested on the decrease complaint.

[4] Again, we barred the appellant from introducing evidence because of its failure to comply with this board's order compelling discovery. The school board waived its presence at a hearing and filed written argument instead. The school board argues appellant has failed to meet his burden. The school board specifically argues:

> "It is the position of the property owner that the Subject Property should be valued consistent with its February 2013 transfer price because no major improvements have been made since that time. However, this proposition must fail because the February 2013 sale is remote to tax lien date. Relying on *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, the Court in *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612 held that when a sale occurs more than twenty-four months prior to a reappraisal and the county auditor determines a different value for the property than the sale price, no presumption of recency applies to the sale. Id. at 17. That is the exact scenario herein."

The school board further argues the owner has failed to provide alternative, competent evidence in support of its proposed value, e.g., an appraisal.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

[6] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

[7] Here, there is no evidence the sale price, which is the foundation for appellant's proposed value, is still a reliable indication of value. The sale occurred more than two years before the tax-lien date, January 1, 2017. So, we must presume the sale is too remote subject to rebuttal by appellant. Appellant has not offered this board evidence that the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. Just as the school board recognizes in its brief, we note the advocated value of

$250,000 is higher than the sale price. That fact, coupled with the allegation no improvements have been made, means even appellant impliedly admits the market has changed since 2013.

[6] Having disposed of the only evidence before us, we affirm the BOR's decision and order the property valued as follows for tax year 2017:

PARCEL 010-011797-00

TRUE VALUE

$506,000

TAXABLE VALUE

$177,100

OHIO BOARD OF TAX APPEALS

JOHN VANAS C/O VLR INVESTMENTS, (et. al.),	CASE NO(S). 2018-2162
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JOHN VANAS C/O VLR INVESTMENTS
Represented by:
JOHN VANAS
1408 E. 222ND STREET
EUCLID, OH 44117

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the

existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DARCY MACGREGOR, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-2151

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DARCY MACGREGOR
OWNER
8040 WORTHINGTON PARK DR
STRONGVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THE VAN ROY COFFEE COMPANY, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1463

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE VAN ROY COFFEE COMPANY
Represented by:
JEFFREY MILLER
4569 SPRING ROAD
BROOKLYN HTS, OH 44131

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon appellant's appeal from a decision of the Cuyahoga County Board of Revision ("BOR") regarding its application for remission of a real property tax late payment penalty for parcel number 531-01-045. We consider the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, and the county appellees' written argument.

At the outset, we admit confusion about the proceedings below and the decision from which appellant appeals. The record before us indicates that appellant filed an application for remission of the late payment penalty for the second half of 2016, asserting payment was timely made on July 13, 2017. The county treasurer recommended the application be denied, and the fiscal officer ultimately denied the application. Upon its review of the application, the BOR denied the request for remission, noting appellant had "multiple late payments." Additional documents certified as part of the statutory transcript pertain to a request for remission of a penalty for the first half of 2017, which the BOR appears to have denied after finding the taxpayer did not demonstrate that its failure to timely pay was due to reasonable cause and not willful neglect. It is unclear whether a late payment penalty was assessed for the first half of 2017, and, further, whether appellant requested remission of such penalty.

Remission of real property tax late payment penalties is governed by R.C. 5715.39, which provides a two-step process for consideration of applications for remission. First, the auditor/fiscal officer must review the application and shall remit a penalty under five specified circumstances, including when "[t]he taxpayer

demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax." R.C. 5715.39(B)(4). After the auditor/fiscal officer determines whether the penalty must be remitted pursuant to R.C. 5715.39(B), the BOR must (1) review the auditor's/fiscal officer's determination and remit payment if it determines that any of the circumstances specified in R.C. 5715.39(B) applies, and (2) determine if the failure to make timely payment is due to "reasonable cause and not willful neglect." R.C. 5715.39(C). This board has held on previous occasions that prior late payments are evidence of willful neglect. See, e.g., *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported; *Patel v. Testa* (Apr. 29, 2014), BTA No. 2014-261, unreported.

In this matter, we are unable to determine whether the statutory process was followed. Specifically, we are unable to determine whether the fiscal officer or the BOR considered appellant's argument that it had timely paid the tax due for the second half of 2016. The tax payment information included in the statutory transcript appears to indicate that a payment of $7,910.13 was made, effective July 21, 2017; however, the information also indicates that such payment was credited to the first half of 2017 rather than the second half of 2016. Such information also indicates that payments were made monthly, in the amount of $363.01, from March 2017 through June 2017, and were credited to the second half of 2016. We question the accuracy of the attribution of these payments to the respective tax periods.

Given the questions raised herein, we are unable to effectively render a decision on the appeal. We therefore remand this matter to the Cuyahoga County Board of Revision for further proceedings, including considering and rendering a decision on appellant's request for remission based on an alleged timely payment of the taxes due for the second half of 2016.

OHIO BOARD OF TAX APPEALS

DAVID POND, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1127

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAVID POND
5130 BLAZER PARKWAY
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, April 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 560-222607-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is a single-family home and appellant's personal residence. The auditor initially assessed the subject's total true value at $189,400, and appellant filed a complaint with the BOR seeking a reduction in value to $157,000. The board of education filed a countercomplaint in support of the auditor's values but withdrew it at the BOR hearing upon discovery that the property is the subject's personal residence. Appellant indicated that he purchased the subject property in 2004 and had done little to improve the property since that time. Appellant asserted that the property had several physical issues, such as mold and a leaking roof. Appellant further claimed that an appraisal was being prepared as part of a pending divorce, but that he had not received the report at the time of the hearing. The BOR gave appellant two weeks to submit the report. The BOR issued a decision maintaining the initially assessed valuation noting that because appellant did not submit the appraisal, it had received no evidence to support a change in value. From this decision, appellant filed the present appeal. This board convened a hearing, at which appellant again appeared to discuss the subject property's purportedly poor condition, arguing that the value of the property should remain unchanged unless a sale takes place to establish a new true value.

In the present appeal, appellant's burden was to come forward with evidence not only to show that is the auditor's value incorrect, but also to establish that his proposed value is the true value of the property.

Schutz v. Cuyahoga Cty. Bd. of Revision, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. The court has long held that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). Although there is no "bright line" test as to whether a sale is recent to or remote from a given tax lien date, when a sale occurs more than 24 months before a tax lien date and is reflected on the property record card maintained by the auditor, it is presumed to be too remote when the auditor determined a different value during the sexennial reappraisal. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588.

In this case, appellant argued that a sale is best evidence of a property's value and should remain the value of the property until it sells again. In this case, appellant purchased the subject property in 2004, well over 24 months before the tax lien date. The Franklin County Auditor conducted multiple countywide reappraisals since that time, most recently for tax year 2017, during which the auditor determined a different value for the subject property. As such, appellant does not benefit from a presumption of recency and was required to present evidence to show not only that the character of the property remained unchanged between the 2004 sale and January 1, 2017, but also that the market conditions were such that the price at which it transferred in 2004 would continue to be the price at which it would change hands in an arm's-length transaction. Appellant did not offer this type of market information. Accordingly, the 2004 sale price is not reliable evidence of value for tax year 2017.

Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, which may be in the form of a non-expert owner's opinion of value. *Schutz*, supra, at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

In this case, appellant relied on evidence of negative conditions to support his requested reduction. While we acknowledge that the subject may need various repairs or updates, it is unclear as to the extent to which these issues affect the subject's value, if at all. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz*, supra, at ¶17. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). As such, we find that appellant failed to meet his burden to prove an alternative value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$189,400

TAXABLE VALUE

$66,290

OHIO BOARD OF TAX APPEALS

FOLZENLOGEN PROPERTIES LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1597 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FOLZENLOGEN PROPERTIES LLC
Represented by:
JOANNE FOLZENLOGEN
OWNER
11400 ENTERPRISE PARK DRIVE, CINCINNATI, OH 45241
CINCINNATI, OH 45241

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Friday, April 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant challenges a decision of the Hamilton County Board of Revision ("BOR") denying a request for remission of real property tax late payment penalties for the second half of tax year 2016. Appellant has the burden to show that the BOR improperly denied its request. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We consider this matter on the notice of appeal and the statutory transcript ("S.T.") certified by the auditor.

[2] Appellant originally sought penalty remission for two tax bills: the first half of 2016 ($259.99) and the second half of 2016 ($545.98). Appellant's application stated, "[t]axpayer's failure to make timely payment of the tax was due to reasonable cause and not willful neglect." Appellant attached a narrative stating it was unaware of its duty to pay the tax because of a partial abatement granted by a local municipality. Appellant, through its president, wrote: "***I wasn't anticipating I would have a tax bill for 6 years."

[3] The first half bill was due January 31, 2017 and the second half due June 20, 2017. While appellant applied under R.C. 5715.39(C), the treasurer recommended denying the application because appellant failed to comply with R.C. 5715.39(B)(2) by not requesting a bill within thirty days of the due date. The treasurer wrote that appellant did not "contact treasurer's office until March 6, 2018 stating they did not receive bill." The auditor concurred with the treasurer, and the BOR denied the application. See S.T. (first half decision with certified mail card number 70001670000613820582 and second half decision with certified mail card

number 70001670000613820575). Appellant only appealed the decision as to the second half of 2016 to this board.

[4] Remission of late payment penalties is governed by R.C. 5715.39. That statute requires penalty remission for the following reasons:

> "(1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.
>
> (3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.
>
> (4) The taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.
>
> (5) With respect to the first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer."

[5] Remission is mandatory if a taxpayer qualifies under R.C. 5715.39(B). *Holmes v. Testa* (Feb. 27, 2018), BTA No. 2017-400, unreported. Penalties must also be remitted if failure to make a timely payment was due to "reasonable cause and not willful neglect." R.C. 5715.39(C).

[6] Having reviewed the record, we find appellant has not demonstrated to this board that it qualifies for penalty remission under R.C. 5715.39. Appellant solely relied on R.C. 5715.39(C), which grants remission when due to "reasonable cause and not willful neglect." While only the second half of 2016 is before us, the record is clear appellant failed to make timely payment of two tax bills. We have long held a penalty can be imposed on a single missed payment, let alone when a taxpayer has a history of failing to make payments timely. See *Snyder v. Zaino* (May 9, 2003), BTA No. 2003-V-246. We cannot conclude appellant's failure to make the second half of 2017 payment timely was due to "reasonable cause."

[7] Appellant did not request remission under R.C. 5715.39(B). Nonetheless, the treasurer analyzed the claim under R.C. 5715.39(B)(2), which grants remission when "the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax." Here, appellant did not request a tax bill until May 2018, well past the respective due date of June 20, 2017.

[8] Because we find appellant does not qualify for remission under R.C. 5715.39, we affirm the decision of the BOR denying penalty remission.

OHIO BOARD OF TAX APPEALS

ELIZABETH ANN HARNIST, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1777

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELIZABETH ANN HARNIST
OWNER
507 KATER AVENUE
HARRISON, OH 45030

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L.
FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Monday, April 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant taxpayer appeals a decision of the board of revision ("BOR"), which denied an application for remission of penalties associated with delinquent payment of real property tax bills for the subject property, parcels L4920-051-000-002, L4920-051-000-036, and L4920-051-000-037, for the first half of tax year 2016. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

[2] The appellant submitted applications, which asserted that her failure to timely pay the property tax due on the subject property was based upon "reasonable cause and not willful neglect." Statutory Transcript at Applications. In doing so, she stated that the subject property had been subject to a land-installment contract and that she had been unaware that the vendees had failed to pay the property taxes. The auditor denied the appellant's applications and forwarded them on to the BOR for further consideration. After reviewing the appellant's prior payment history, the BOR denied the applications. The BOR determined that at the time of its consideration of the applications, the appellant had an established history of making late property tax payments, i.e., for all tax periods in tax years 2016 and 2017. The BOR subsequently issued written decisions to that effect. Thereafter, the appellant appealed to this board.

[3] When cases are appealed to this board, the burden is on the appellant to demonstrate the error in the board of revision's decision. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 OhioSt.3d

564, 566 (2001). See, also *Estate of Raymond J. Battaglia v. Zaino* (Oct. 12, 2001), BTA No.2001-L-511, unreported.

[4] As an initial matter, it should be noted that the appellant declined the opportunity to submit evidence at a hearing before this board and decided to rely upon the claims contained in the underlying applications for remission of the late payment penalties and notice of appeal. However, unsubstantiated allegations in the application are insufficient basis to remit a penalty for untimely payment of property tax. See *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported, at 3 (holding that that a notice of appeal "is not an adequate substitute for reliable documentary and testimonial evidence. The Notice of Appeal merely constitutes unsworn, unproven statements, claims and allegations."). Nevertheless, we proceed to evaluate the appellant's arguments.

[5] Based upon our review, we find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax, late payment penalties shall be remitted. Relevant to this matter, R.C. 5715.39(C) provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. The appellant failed to come forward with evidence to rebut the BOR's determination that she had a history of failing to timely pay property tax on the subject property for periods throughout tax years 2016 and 2017. Though the appellant requested that this board consider her history of timely payment of property tax for other properties located in another county, by way of the notice of appeal, we are unable to do so. Our inquiry is limited to the appellant's payment history on the subject property. We agree, therefore, that remission of the late payment penalties for the first half of tax year 2016 would be inappropriate.

[6] Furthermore, although we sympathize with the appellant's plight, even if she was unaware of the property tax bills, she was not excused from their timely payment. See R.C. 323.13 ("Failure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay.").

[7] Based upon the foregoing, we find that the appellant has failed to satisfy the evidentiary burden on appeal. As such, we affirm the BOR's decisions to deny the appellant's requests for remission of the late payment penalties for the first half of tax year 2016.

OHIO BOARD OF TAX APPEALS

HILLVIEW FARMS INC., (et. al.), Appellant(s), vs. UNION COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1671 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HILLVIEW FARMS INC.
Represented by:
CARI GROME
SECRETARY/TREASURER
HILLVIEW FARMS INC.
19819 ST RT 31
MARYSVILLE, OH 43040

For the Appellee(s) - UNION COUNTY BOARD OF REVISION
Represented by:
RICK RODGER
ASSISTANT PROSECUTING ATTORNEY
UNION COUNTY
221 WEST 5TH STREET, SUITE 333
MARYSVILLE, OH 43040

Entered Monday, April 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner Hillview Farms, Inc. (“Hillview”) appeals from a decision of the Union County Board of Revision ("BOR") denying three applications for penalty remission. We consider the matter upon the notice of appeal and the statutory transcript filed by the auditor (“S.T.”). The auditor certified a decision recording as well, but that recording seems to have been certified in error because it is for an unrelated BOR case. No party filed written argument.

[2] Remission of real property tax late payment penalties is governed by R.C. 5715.39. That statute requires penalty remission for the following reasons:

> "(1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

(3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

(4) The taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(5) With respect to the first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer." R.C. 5715.39(B).

[3] Remission is mandatory if a taxpayer qualifies under R.C. 5715.39(B). *Holmes v. Testa* (Feb. 27, 2018), BTA No. 2017-400, unreported. The BOR must also remit penalties if a "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

[4] Hillview's applications purportedly request penalty remission for the first and second half of tax year 2018 on three parcels—3000100070000, 3000100080000, 3000100040000. However, we note the tax bills attached to the applications were only for the second half of tax year 2017. So, it appears Hillview only filed applications for the second half of 2017 since the first half bills for 2017 were not attached and 2018 real property taxes were not yet due. We also note the three bills for the second half of 2017 equal $4,451.22, which is the amount requested in Hillview's notice of appeal to this board. We accordingly limit our review to the second half of 2017.

[5] Hillview purchased the parcels in 2017. The conveyance fee statement as well as the deed, both filed by the seller, list the tax mailing address as 22310 Broadway Road, Marysville, Ohio 43040. Hillview states it cannot receive mail at that address, which is a field. It also claims it had no knowledge the seller reported that address on the conveyance fee statement and deed.

[6] However, because that address was the then-current tax mailing address, the auditor sent the tax bills there. Hillview does not allege it ever attempted to verify the auditor had the correct address nor does Hillview claim it tried to update the tax mailing address in writing. While we restrict our review to the second half of 2017 since that is the bill Hillview appealed, it would seem this same issue would have arisen when the auditor mailed the bills for the first half of 2017 because Hillview would have been the owner at that time. However, it is unclear from the record what transpired with regard to the first half of 2017.

[7] Hillview relies solely on R.C. 5715.39(B)(1) and (B)(2). We find Hillview qualifies for remission under R.C. 5715.39(B)(2) but not (B)(1). R.C. 5715.39(B)(1) requires remission when payment is late due to "negligence or error of the county auditor or county treasurer." Here, we see no evidence that either officer acted negligently. R.C. 323.13 is clear Hillview had a duty to update the tax mailing address and "[a] change in the mailing address of any tax bill shall be made in writing to the county treasurer." The treasurer sent the bill to the then-current tax mailing address.

[8] However, we do find R.C. 5715.39(B)(2) applies. That subsection requires remission when a taxpayer fails to receive a tax bill and makes "a good faith effort to obtain such bill within thirty days after the last day for payment of the tax." Here, the parties do not dispute Hillview did not receive its tax bills. It also appears no party disputes Hillview sought to, and did, obtain a tax bill within thirty days after the bills were due. The bills were due July 18, 2018. Hillview acquired the bills on August 15, 2018. It then paid the taxes on August 17, 2018. The BOR's decision does not address the issue. The treasurer recommended denial of theapplications because Hillview had a duty to update its mailing address, but the treasurer did not address whether R.C. 5715.39(B)(2) applied. The auditor likewise failed to address whether R.C. 5715.39(B)(2) applied.

[9] Because R.C. 5715.39(B) requires penalty remission when a taxpayer qualifies, we find the BOR erred in denying the request. We reverse and remand this case to the BOR with instructions to grant remission of the penalty for the second half of tax year 2017 on the three parcels.

OHIO BOARD OF TAX APPEALS

RICHARD R. HAYNES, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1287

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RICHARD R. HAYNES
OWNER
352 NATIONAL ROAD
HEBRON, OH 43025

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, April 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Richard Haynes appeals from a decision of the Franklin County Board of Revision, which valued the subject parcel at $82,500 for tax year 2017. Mr. Haynes argues the subject should be valued at $70,000. We consider this matter upon the notice of appeal, the transcript certified by the BOR ("S.T."), this board's hearing record ("H.R."), and the exhibits submitted at this board's hearing.

[2] The value of this property has already undergone several levels of review. H.R. at 15-19. The subject is a 0.15 acre lot improved with a duplex. The auditor set a preliminary value of $140,000. H.R. at 6. Brian Katz from the auditor's office testified that figure was developed by Tyler Technologies, a firm that assists the auditor in appraising commercial property. Id. Mr. Haynes challenged that preliminary value at an informal review before the auditor. H.R. at 6-7, 17. The auditor jettisoned the preliminary value after conducting the informal review and set a final value of $82,500. Mr. Katz explained that was because some of the comparable sales used to create the $140,000 figure were found to be distinguishable upon further investigation. H.R. at 7. He stated the following:

> "So our systems derive value. They provide comparable sales, and it would appear that the system pulled comparable sales – what it believed to be comparable sales in your – for your property. Upon further review, some of these sales do not match up with what we would deem to be comparable sales. So that original number was based off of those sales that we have upon second review determined to not be as reflective of your value as it should be." Id.

[3] The auditor set the $82,500 value using a gross rent multiplier and market data. H.R. at 9-12, Ex. B (gross rent multiplier spreadsheet), BTA Ex. C (sales data).

[4] After the auditor adopted the final value, Mr. Haynes filed a decrease complaint asking for a value of $70,000. He attached to the complaint a narrative stating the subject's value should be reduced based on market data. However, it appears he submitted no documentary or tangible evidence of market sales other than his handwritten notes on a parcel map. Mr. Haynes also noted some alleged environmental issues with the subject. In support, he offered a letter from the city of Bexley stating it conducted "some environmental soil tests on property that the City owns in the vicinity of Ferndale and Mayfield." Those tests, according to the letter, show the soil had above-standard levels of several pollutants. Mr. Haynes did not have the subject's soil tested.

[5] At the BOR hearing, Mr. Haynes critiqued the auditor for using sales that were, in Mr. Haynes' view, too remote geographically or sales not offered on the open market. While the specific allegation is unclear, Mr. Haynes alleged the local municipality was trying to artificially inflate values to push specific rental properties, including the subject, out of the geographic area. Mr. Haynes admitted to the BOR that, while the difference in his requested value was "not much money," he filed the complaint out of "principle." He further testified he charged the tenants rents of $550 per month, and tenants pay utilities, minus water. He did not have the subject appraised by a qualified appraiser. He further testified there had been no significant updates to the subject in recent years.

[6] The BOR ultimately affirmed the auditor, finding Mr. Haynes had not met his burden to prove a lower value. The BOR found the "income approach more than supports the auditor's current valuation." The BOR specifically rejected Mr. Haynes' evidence finding it was not "evidence of a specific value." The BOR noted much of the evidence was merely about the motivation of parties in certain transactions—referring to the argument about the local municipality.

[7] Mr. Haynes appealed to this board, and we held an evidentiary hearing. At that hearing, Mr. Haynes reiterated the same general arguments and called Mr. Katz to testify about the auditor's valuation process generally. Mr. Haynes again offered the same evidence about the environmental issues and market values.

[8] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

[9] As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). The record is unclear when Mr. Haynes purchased the property or what he paid. While that information is not listed on the parcel card, Mr. Haynes testified he made several updates going back nearly ten years implying he has owned the subject for at least a decade. A sale that occurs more than 24 months before tax-lien date is generally not recent. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio S.3d 92, 2014-Ohio-1588, ¶¶ 1-2. No party to this appeal asks us to adopt a sale price, and we find no evidence in the record that would lead us to conclude whatever price Mr. Haynes paid for the subject "[continues] to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Akron City School*, supra).

[10] Because there is no recent sale, “an appraisal becomes necessary." *State ex rel. Park Invest. Co.*, supra.; see also *LTC Properties, Inc. v. Licking Cty. Bd. of* Revision, 133 Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). However, Mr. Haynes did not obtain an appraisal. Instead, Mr. Haynes offers the same two arguments he made to the BOR, i.e., unadjusted market data evidence and potential environmental defects. We address each in turn.

[11] We have repeatedly said unadjusted comparable sales data is generally insufficient to warrant an adjustment. In *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, we said "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property," this board cannot generally find unadjusted sales data dispositive. When a party gives us nothing more than a list of raw sales data we are “left to speculate as to how differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination." *Wearn v. Cuyahoga Cty. Bd. of Revision* (May 22, 2018), BTA No. 2017-1159, unreported (citing generally The Appraisal of Real Estate (13th Ed.2008)). Here, Mr. Haynes relies on plat maps with his handwritten notations to define the market. See H.R., Exs. 5-6. Because there is no indication Mr. Haynes had firsthand knowledge about the specific details of the sales he references, we can only conclude his testimony on the market amounts to unreliable hearsay. The Ohio Supreme Court has held “the owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay.” *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19.

[12] Even assuming his data is factually correct, we would still find the evidence lacking because an appraiser would need to make adjustments to the sales so that the data can be applied to the subject property. While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile sales data into a report like the data Mr. Haynes offered. An appraiser adjusts for the differences between the comparables and the subject. Furthermore, we are particularly suspicious whether a party's unadjusted comparable sales data truly captures the market in which the subject would have operated on the tax lien date when there is no competent evidence to demonstrate the relevant market conditions at that time. See *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning"). Accordingly, we do not find Mr. Haynes unadjusted sales data is competent evidence of value.

[13] We do recognize some of Mr. Haynes' arguments and evidence were offered to rebut the data the auditor used with the goal of bringing suspicion upon the auditor’s value. However, we do not see how the sales data the auditor considered is problematic. Moreover, it is not enough to show the auditor’s value is wrong; an appealing party must prove what value is appropriate. *Columbus City School Dist.*, supra, at 566. Neither the auditor nor the BOR bears the “burden to offer proof of the accuracy of the appraisal on which the county initially relies.” *Jakobovitch*, supra.

[14] Turning to the environmental argument, we find Mr. Haynes has likewise failed to carry his burden. First, Mr. Haynes has not shown the subject has above-standard soil pollution. The letter he submitted says the city of Bexley conducted tests on land owned by the city, not Mr. Haynes’ property. We cannot conclude the subject's soil is polluted in the absence of some evidence, e.g., a soil test, which Mr. Haynes did not have performed. Even if we found the soil was contaminated, we would need an appraisal to quantify the effect on value. The Supreme Court has been clear that, while negative conditions can impact value, the party must present “adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value.” *Gallick*, supra at 4 (citing *Throckmorton v. Hamilton*

Cty. Bd. of Revision, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on the evidence of the subject's potential negative features to adjust the subject's value.

[15] We note that many of Mr. Haynes' arguments are based on his subjective opinion of value. To be sure, an owner is entitled to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). While an owner might be an expert in the subject property, an owner might not be an expert in valuation or the market. The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975). The Supreme Court has also held "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). Here, we cannot rely upon Mr. Haynes' opinion of value because we find no competent of probative evidence to support his value. While he might be an expert on the subject property generally, he has not established his expertise in property valuation or the market. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative). We find his opinion falls far short of an actual appraisal.

[16] Having independently reviewed the record, we find Mr. Haynes has failed to carry his burden. We see no reason to deviate from the auditor's valuation, which was affirmed by the BOR. See *Jakobovitch*, supra ("the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof"). For tax year 2017, we order the property to be valued in accordance with the following values:

PARCEL 02000451500

TRUE VALUE

$82,500

TAXABLE VALUE

$28,880

OHIO BOARD OF TAX APPEALS

DAVE L. SCHROYER (CRA-DA PROPERTIES LLC), (et. al.),	CASE NO(S). 2018-1273
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MERCER COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - DAVE L. SCHROYER (CRA-DA PROPERTIES LLC)
9411 US 127
CELINA, OH 45822

For the Appellee(s) - MERCER COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, April 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner CRA-DA Properties LLC, through its owner Dave Shroyer, appeals from a decision of the Mercer County Board of Revision ("BOR"), which upheld the auditor's valuation of the subject parcel at $408,610 for tax year 2017. Appellant argues the subject should be valued at $275,000. We now consider the matter on the notice of appeal, the transcript certified by the auditor, the record of this board's hearing, and the exhibit submitted by appellant at this board's hearing.

[2] Schroyer Incorporated, owned by George Schroyer, operated a trucking company on the subject property until 2008. The property was then sold to appellant, a limited liability company, for $175,000 on January 15, 2008. Appellant's owners, George Shroyer's sons, operated the trucking company on the subject until 2012 when appellant sold the trucking equipment to Grammer Industries ("Grammer"). Appellant retained title to the subject and leased a portion of the subject to Grammer. The lease permits Grammer to use approximately five acres of the subject including several buildings. Grammer pays appellant $3,000 per month in rent.

[3] Appellant retained use of the remaining acreage and improvements; the improvements, buildings, are used to store personal property for the Schroyer family and for "hobby restoration." The record shows part of the subject is subject to a conservation program, which generates income for appellant. The auditor valued the subject at $480,610 for tax year 2017, and appellant filed a decrease complaint with an opinion of value at $175,000.

[4] The BOR held a hearing, and Mr. Schroyer represented appellant. He described the history of the property

and how appellant uses the property. Appellant also furnished an income and expense statement. However, appellant did not have the subject professionally appraised. The BOR ultimately affirmed the auditor holding "[a]fter careful consideration of the facts and evidence presented, the complainant failed to meet the burden of proof." Appellant filed an appeal with this board, now listing an opinion of value at $275,000.

[5] Appellant's owner and his spouse testified at this board's hearing. They testified they came up with the opinion of value by adding the 2008 sales price ($175,000) to the cost spent building the post-2008 improvements ($113,000). H.R. at 8. We note, however, that the opinion of value on the notice of appeal is $275,000, which is less than the sum of the calculation presented. Appellant did not submit an appraisal, although the owner's wife did testify they had contacted a commercial appraiser recently. H.R. at 11.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

[7] The best evidence of value is a recent, arm's-length sale. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. The most recent sale was in 2008, which we must presume is not recent. Having reviewed the evidence, we find the 2008 sale is not competent evidence of value because appellant did not submit evidence showing the sale price continues "to be a reliable indication of value despite the passage of time." Id. The testimony was clear appellant has improved the subject with at least one building since the 2008 sale.

[8] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of* Revision, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile data. An appraiser adjusts for the differences between the comparables and the subject. An appraiser may also use other recognized methods of valuation such as the cost and income capitalization approach. See *Gallick*, supra. Here, however, appellant did not have the subject professionally appraised.

[9] Instead of an appraisal, appellant offered a financial report, the Grammer lease, and some invoices showing expenses. Without a qualifying appraisal, we are unable to find that evidence warrants a change in value. We are generally unable to find the calculation used by appellant in creating its opinion of value is reliable. For example, appellants offered documents to show how much, or little, appellant profits from ownership of the subject. While that data could be relevant for an income capitalization appraisal, appellant's data alone is not competent evidence of value. An appraiser goes further than compile expenses and income for the subject; the appraiser must:

1. Research the income and expense data for the subject property and comparables.

2. Estimate the potential gross income of the property by adding the rental income and any other potential income.

3. Estimate the vacancy and collection loss.

4. Subtract vacancy and collection loss from total potential gross income to arrive at the effective gross income of the subject property.

5. Estimate the total operating expenses for the subject by adding fixed expenses, variable expenses, and a replacement allowance (where applicable).

6. Subtract the estimate of total operating expenses from the estimate of effective gross income to arrive at net operating income. (Deductions for capital items may also be necessary at various points in time through the projection period to calculate the cash flow used in discounted cash flow analysis.)

7. Apply one of the direct or yield capitalization techniques to this data to generate a value via the income capitalization approach.

See The Appraisal of Real Estate (14th Ed.2013). Here, that complex calculation cannot be completed with appellant's evidence alone. As the Supreme Court explained in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996), an appraiser must determine whether a property's actual income and expenses conform to the market before relying on such information to opine value.

[10] The data offered could also be relevant to a cost approach appraisal, but more information would still be necessary. The cost approach seeks to determine the replacement cost of improvements plus the land value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 1997-A-175, unreported. Appellant's evidence is insufficient to compute that value. First, appellant valued the land according to the 2008 sale price, which may or may not be indicative of value as of January 1, 2017. Second, the cost of building the post-2008 improvements may or may not reflect market prices as of January 1, 2017. Because a qualified appraiser did not develop a formal appraisal, we are unable to conclude the calculation is accurate.

[11] We, therefore, find appellant has not carried its burden. We order the subject be valued as follows for tax year 2017.

PARCEL NUMBER 250168000000

TRUE VALUE

$480,610

TAXABLE VALUE

$168,210

OHIO BOARD OF TAX APPEALS

BRIAN EDGAR GARRY, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1212

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRIAN EDGAR GARRY
Represented by:
BRIAN GARRY
178 WOOLPER AVE.
CINCINNATI, OH 45220

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, April 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals decisions of the board of revision ("BOR"), which dismissed the separate complaints filed for each of the subject properties, parcels 217-0054-0041, 195-0028-0293, and 595-0008-0510, as to their value for tax year 2017. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject properties were initially assessed at $167,440 for parcel 217-0054-0041, $40,990 for parcel 195-0028-0293, and $31,650 for parcel 595-0008-0510. The property owner filed a complaint for each parcel. On line 8 of the complaints, the property owner listed three different parcels and a corresponding value. The BOR notified the property owner that it would hold "standing" hearings to determine the jurisdictional sufficiency of the complaints because line(s) 8 and/or 9 had not been completed. The property owner did not appear at the hearing and the BOR voted to dismiss the complaints. The BOR issued written decisions to that effect and this appeal ensued. Because our jurisdiction is derivative, the only issue before us is the propriety of the BOR's dismissal.

Days prior to this board's scheduled merit hearing, the county appellees submitted written argument, which asserted that the BOR properly determined that it lacked jurisdiction to consider the complaints, and waived their appearance at the hearing.

The property owner appeared at this board's hearing to supplement the record with additional argument and evidence. The property owner explained that he believed that the BOR failed to accurately make him aware of the problems with the complaints. According to him, he completed line 8 of the complaints; however, he provided comparable properties and their sales prices. In doing so, the property owner asserted that the three comparable properties provided his opinions of value as a range between the lowest comparable sale price and the highest comparable sale price. The property owner submitted written argument responsive to the county appellees' written argument, the letters from the BOR that alerted him that line(s) 8 and/or 9 had not been completed, and comparable sales data to support his arguments.

For a complaint to be valid, it must include all information that goes to the core of procedural efficiency. *Cleveland Elec. Ilium. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591 (1998). The Supreme Court has held that "the requirement to state the amount of value runs to the core of procedural efficiency and is therefore jurisdictional." *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, ¶22. As such, a complainant's failure to specify an opinion of value in the complaint means that the complaint fails to invoke the jurisdiction of a board of revision. Id. The complaint must contain this information because the General Assembly requires the board of revision to give notice to affected parties, but only if the requested reduction or increase is $50,000 or more in fair market value ($17,500 or more in taxable value). See R.C. 5715.19(B). When line 8 is left blank, the board of revision is unable to verify whether the required notices should be sent.

In this matter, both the property owner and county appellees' assert that this board's decision in *Storts v. Perry Cty. Bd. of Revision* (Apr. 24, 2012), BTA No. 2009-Q-1687, unreported, support their respective positions. In that appeal, this board determined that a complaint was jurisdictionally sufficient because line 8 noted that the opinion of value was "about half" of the initially assessed value. We held that "[w]hile appellant did not indicate a specific number as the value sought, he indicated that the value should be about half of the amount indicated in Column B -- the current taxable value ***, a simple mathematical calculation." Id. at 4-5. Here, there is no similar "simple mathematical calculation" that would have allowed the BOR to narrow down the property owner's opinions of value. For example, the complaint for parcel 595-0008-0510 provided comparable sales that ranged in value from $5,000 to $43,320 and the property owner explained that such information indicated that the parcel should have been valued no lower than $5,000 and no higher than $43,320. However, the property owner was required to provide *a specific value* not a range in value. Furthermore, it should be noted that this parcel was assessed at $31,650, which was well within the range claimed by the property owner. Thus, an argument could be made that there was no real dispute as to the parcel's value.

Based upon the foregoing, we find that the BOR properly determined that it lacked jurisdiction to consider the merits of the underlying complaints. Therefore, we affirm the BOR's decisions.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1548
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

MENLO REALTY INCOME PROPERTIES 28, LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal filed by the Columbus City Schools Board of Education ("BOE") from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel number 010-291773-00 for tax year 2016. We consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the record of this board's hearing, and the parties' written arguments.

The subject property is retail condominium unit occupied by a CVS retail pharmacy. For tax year 2016, the county auditor valued the property at $1,600,000. (We note that prior tax years – 2014 and 2015 – are the subject of another appeal pending before this board following remand by the Supreme Court. *Menlo Realty Income Properties 28 v. Franklin Cty. Bd. of Revision* (Jan. 3, 2017), BTA No. 2016-445, unreported,

remanded by Slip Opinion No. 2018-Ohio-4305.) The appellee property owner, Menlo Realty Income Properties 28 LLC ("Menlo"), filed a complaint against the valuation seeking a decrease to $3,900,000, which it later amended to $4,000,000 to conform to its appraisal evidence. The BOE filed a countercomplaint seeking an increase to $4,865,000 – the amount for which the property sold in June 2013.

At the BOR hearing, Menlo submitted an appraisal report prepared by appraisers Samuel D. Koon, MAI, and Owen T. Heisey, who opined the value of the property as of January 1, 2016 was $4,000,000. Mr. Heisey testified at the hearing, explaining the opinion of value was based on the income capitalization and sales comparison approaches to value. He indicated he relied on the June 2013 sale of the subject property as a sale comparable, adjusting it upward for market condition and downward for vacancy, given his opinion that market vacancy was 95%. He further indicated the actual lease rate of $26.85/SF was used as a lease comparable, though he opined a market rent of $25/SF as of tax lien date. In response to questions from counsel for the BOE, Mr. Heisey indicated he believed the actual lease was based, at least in part, on the cost of construction/tenant improvements based on CVS's "rigorous specifications." Although the BOE made note of the June 2013 sale of the property, Menlo's counsel argued the sale was no longer recent to tax lien date. After considering the evidence presented, the BOR adopted the appraisal value and issued a decision valuing the property at $4,000,000 as of January 1, 2016.

The BOE appealed to this board, seeking an increase in value to $4,865,000 in accordance with the June 2013 sale price. During discovery, it sought from Menlo the purchase agreement from the June 2013 sale; however, the document was not provided and this board issued an order compelling Menlo to provide it. When Menlo did not comply, the BOE moved for monetary sanctions of $660. In response to the motion, Menlo's counsel indicated Menlo is unable to provide the purchase agreement without a confidentiality agreement because the document constitutes a trade secret.

Menlo's response is troubling. This board's discovery rule provides a mechanism for protection of a trade secret – the filing of a motion for protective order. Ohio Adm. Code 5717-1-12(D). Menlo filed no such motion, either after this board compelled it to provide the document or after the BOE moved for sanctions for Menlo's failure to comply. Given this failure, we find the BOE's request for sanctions appropriate and hereby grant monetary sanctions against Menlo in the amount of $660.

We now turn to the merits of the appeal. We begin our review with the June 2013 sale of the subject property, upon which the BOE asks us to rely in determining value. "The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. Although we acknowledge that the BOE argued before the BOR that the property should be valued in accordance with the sale, this board reviews the issue of whether the sale price establishes the subject property's value de novo. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

The parties do not appear to dispute that the June 2013 sale was conducted at arm's-length. We must therefore determine whether the sale is recent to tax lien date, i.e., January 1, 2016. As the Supreme Court explained in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, there is no bright line rule "to establish when a sale is sufficiently close to the tax-lien date to be presumed to be recent." Id. at ¶13. The court in *Akron* rejected a presumption that a sale is *not* recent when the sale that occurred more than 24 months prior to tax lien date, *unless* the county auditor considered and rejected such sale in a reappraisal. Id. at ¶22, 26. Here, the sexennial reappraisal for Franklin County did not occur until the subsequent tax year – tax year 2017. The sale is therefore presumed recent to tax lien date. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶17.

We therefore look to the evidence in the record of any change in market conditions between the date of sale and tax lien date. (There is no indication that the subject property itself underwent any significant change

during that time period. See *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439.) The BOE argues in its brief that Mr. Heisey "made no market adjustment to [the June 2013] sale to account for a change in market conditions in the period between the sale and 2016 tax lien date." BOE Brief at 9. We disagree. In his summary of adjustments to his sale comparables, Mr. Heisey indicated the sale of the subject property was adjusted upward for date of sale. When he testified before the BOR, he indicated that the market on tax lien date was slightly better than it was in June 2013. We find support for a change in market conditions between June 2013 and tax lien date in Mr. Heisey's analysis of vacancy rates in the Columbus retail market. He indicates in the report that vacancy was "in the range of 10.0% near the beginning of 2013" and fell to an estimated 5.1% in the first quarter of 2016. S.T., Ex. F at D-5. We find such evidence rebuts the presumption that the sale of the property more than thirty months prior is recent to tax lien date.

Having found the sale remote, we find it is not the best evidence of the subject property's value as of January 1, 2016.

Because the BOE has presented no new evidence of value, we find it has failed to meet its burden on appeal. We find the *Bedford* rule applicable to this matter, per the elements explained by the court in *Dublin City Schools*, supra: the property owner filed the complaint, the BOR ordered a reduced value based on the owner's evidence, the BOE appealed to this board, and the BOR's reduction was based on appraisal evidence. Id. at ¶9-11. When the *Bedford* rule applies, to prevail on appeal, the BOE must provide

independent evidence of value or prove legal error in the BOR's determination. Id. at ¶7. See also *Huber Hts. City Schools Bd. of Revision*, 154 Ohio St.3d 332, 2018-Ohio-4284 (evidence relied upon by the BOR must be "competent and minimally plausible"); *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919 (*Bedford* rule does not apply where BOR committed legal error). Here, it has done neither. The BOR's value therefore serves as the default value on appeal to this board.

Based upon the foregoing, it is the decision of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$4,000,000

TAXABLE VALUE

$1,400,000

In addition, the BOE's motion for sanctions is granted, and Menlo is hereby ordered to remit to the BOE $660 as a monetary penalty.

OHIO BOARD OF TAX APPEALS

1375 CORY LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1419 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1375 CORY LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, April 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] 1375 Cory LLC ("Cory") appeals from a decision of the Montgomery County Board of Revision ("BOR") valuing the subject parcel at $40,490 for tax year 2017. We consider this matter upon the notice of appeal, the transcript certified by the BOR ("S.T."), the record from this board's hearing ("H.R."), and the exhibit submitted at our hearing.

[2] The auditor valued the subject at $59,060 for tax year 2017, and Cory filed a decrease complaint requesting a value of $11,126 per a June 2009 sale. The parcel card confirms the property was sold in June 2009 for $11,126. Cory submitted the settlement statement as well as unadjusted market data. At the BOR hearing, Cory's manager testified the subject is improved with a four-bedroom residence, which Cory rents to tenants for $780 per month. The BOR granted a partial reduction to $40,490. While the decision recording was lost due to a technical issue, the BOR's handwritten notes suggest the BOR used a gross income multiplier using rents reported by Cory's representative.

[3] The appellant must prove the adjustment in value requested when appealing from a board of revision to us. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No.

2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

[5] In this case, Cory offers a sale that occurred approximately eight years before January 1, 2017. We find the sale is too remote to be competent evidence of value for tax year 2017. See *Akron City School Dist.*, supra, at ¶¶ 12-17. Cory did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. Cory's representative testified briefly to the BOR about the property but submitted no appraisal or competent evidence to demonstrate that the eight-year-old sale is recent to tax lien date.

[6] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013), 2. Here, Cory did not obtain an appraisal but instead offered raw sales data. However, raw sales data alone is generally not a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. Accordingly, we find Cory has failed to meet its burden.

[7] We are also required to independently review the BOR's reduction to $40,490, which appears to be based on a gross income multiplier. It is unclear, however, what specific formula the BOR used or where the BOR obtained the necessary data. It appears the BOR used gross rents as reported by Cory's representative at the BOR hearing. While gross rents would be probative to an income approach appraisal, additional information would be necessary and a formal appraisal developed. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 1997-A-175, unreported. This board has rejected the untailored gross rent multiplier method of valuation and has been affirmed in doing so. See *Independence Sch. Dist. Bd. of Educ. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845. Gross rent multipliers are only reliable in specific circumstances and generally require application by an appraiser. Id. at ¶ 17. In *Edgewood Manor of Westerville, Inc. v. Franklin Cty. Bd. of Revision* (Sept. 8, 2006), BTA No. 2004-T-706, unreported, we held:

> "Appraisers who attempt to derive and apply gross income multipliers for valuation purposes must be careful for several reasons. First, the properties analyzed must be comparable to the subject property and one another regarding physical, locational, and investment characteristics.

> Properties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes. The Appraisal of Real Estate, at 546. The Appraisal of Real Estate further cautions that income multipliers should not be used to determine value under the market data approach because comparable prices are not adjusted on the basis of differences in net operating income per unit because rents and sale prices tend to move in relative tandem."

[8] We see no evidence in the record that the BOR controlled for all those variables nor are we able to determine where the BOR obtained the data to create its gross income multiplier. Accordingly, we reinstate the auditor's value. See *Sapina*, supra.

[9] We order the property to be assessed in accordance with the following values for tax year

2017: PARCEL NUMBER R72 12002 0029 TRUE VALUE

$59,060

TAXABLE VALUE

$20,670

OHIO BOARD OF TAX APPEALS

EDWARD ARUSHANYAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-104

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EDWARD ARUSHANYAN
1069 AVONDALE ROAD
SOUTH EUCLID, OH 44121

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, April 10, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR forty-one days after the mailing of the BOR's decision. Appellant's response acknowledged that the notice of appeal was filed late due to a misunderstanding of the filing instructions. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must

be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ROBERT KOVACHICK, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-1

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT KOVACHICK
1322 PLYMOUTH ROAD
CLEVELAND, OH 44109

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On January 2, 2019, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on January 2, 2019. Appellant did not include a copy of a BOR decision. The record does not demonstrate that the Cuyahoga County Board of Revision issued a decision for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter

must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DAWSON, DAVID J, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1390 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAWSON, DAVID J
Represented by:
DAWSON DAVID J
OWNER
P.O. BOX 2505
NEWPORT NEWS , VA 23609

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Thursday, April 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner David Dawson appeals from a decision of the Hamilton County Board of Revision ("BOR") determining the value of parcel 11500010211 for tax year 2017. The BOR affirmed the auditor's value of $184,050; Mr. Dawson argues the subject should be valued at $95,000. We now consider the matter upon the notice of appeal, the transcript certified by the auditor ("S.T."), our hearing record ("H.R."), and the exhibit Mr. Dawson submitted at our hearing.

The auditor valued the subject at $184,050 for tax year 2017, and Mr. Dawson filed a decrease complaint with an opinion of value at $95,000. The line providing a complainant space to explain their reasoning was left blank. S.T., Ex. A. The subject is a .12 acre lot improved with a single-family residence. Mr. Dawson has owned the subject since at least 1994 when he built the residence on the lot. H.R. at 10. The parcel card shows a sale occurred in 2002, but the facts of that sale are unclear from the record. Also, the parcel card lists the 2002 sale price as $0.

The BOR set an initial hearing date for June 1, 2018. The BOR granted Mr. Dawson at least two continuances. See S.T., Ex. D. The BOR declined to grant a third continuance stating it had to move forward with the hearing because the matter had been pending for too long. It set the final hearing for July 11, 2018, but Mr. Dawson did not attend. H.R. at 5-7. Accordingly, the BOR limited its review to the documents Mr. Dawson submitted with the complaint, i.e., a mailed letter from the auditor discussing the

final valuation of the subject and a copy of the tax bill from the treasurer. The auditor's office submitted a report from appraiser Kathleen Siciliano stating "the Auditor's Real Estate Department is of the opinion that the complainant has failed to meet the burden of proof and no sufficient claim or probative documentation has been presented to warrant a change in valuation at this time." S.T., Ex. F. The BOR affirmed the auditor noting the dearth of evidence offered to support Mr. Dawson's opinion of value.

Mr. Dawson appealed to us maintaining his opinion of value at $95,000. At our hearing, Mr. Dawson testified that the area is blighted, and he offered the testimony of one witness who agreed the area is blighted. H.R. at 9. Mr. Dawson testified "the houses all around the area are in dilapidated condition, everything is falling apart." Id. Mr. Dawson submitted appellant's exhibit A, which includes sixteen photographs and an appraisal. Scott Stieber prepared the appraisal. Mr. Stieber's appraisal has an opinion of value of $130,000, as of November 8, 2018. Mr. Stieber did not testify.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that occurs more than 24 months before tax-lien date is generally not recent. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶¶ 1-2. Neither party alleges the subject should be valued in accordance with the 2002 sale. It seems unlikely that sale was an arm's-length transaction because the parcel card states the sale price was $0. Accordingly, we cannot rely on the 2002 sale as competent evidence of value.

In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). However, we cannot find Mr. Stieber's appraisal to be competent evidence of value because he did not testify and because he did not appraise the subject as of the tax-lien date.

First, we generally reject an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported.

Secondly, Mr. Stieber did not appraise the property as of the tax-lien date, January 1, 2017. We have also generally rejected such appraisals in the past, and the Ohio Supreme Court has affirmed us. For example, in *Jakobovitch*, supra, at ¶ 12, a property owner presented an appraisal opining the value of a parcel as of July 2010; however, the relevant tax-lien date was January 1, 2013. We "refused to credit" the appraisal, and the Ohio Supreme Court affirmed our decision. Id. The court held "[t]he vintage of an appraisal matters

because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶ 15. (quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997)).

We recognize the Supreme Court has carved out an exception to the general rule that non-tax-lien dated appraisals are generally unreliable. See *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*"). In *Team Rentals*, the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the appraisal's proponent testified about why the appraisal was created, and a party relied upon the appraisal in a financial transaction. Id. at ¶¶ 30-31. Here, Mr. Steiber's appraisal was created for tax valuation purposes; there is no evidence the appraisal was relied upon by any party in a financial transaction. See H.R. 5-8. Moreover, the data within the report is not probative of value. Mr. Steiber appears to have relied on three comaprable sales in deriving his opinion of value. All three sales occurred in 2018, more than a year after tax lien date. In the absence of any testimony relating such sales back to tax lien date, we find neither Mr. Steiber's opinion of value nor the contents of his report are probative of value.

The only additional evidence offered by Mr. Dawson was testimonial evidence that the house is older and the surrounding area blighted. We are unable to find an adjustment is warranted based solely on those facts. The impact those characteristics could have on value is not self-evident. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties." *Gallick*, supra, at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported. Having reviewed the evidence submitted, we find Mr. Dawson has failed to satisfy his burden.

For tax year 2017, we order the property to be valued in accordance with the following values:

PARCEL 115-0001-0211-00

TRUE VALUE

$184,050

TAXABLE VALUE

$64,420

OHIO BOARD OF TAX APPEALS

MENLO REALTY INCOME PROPERTIES 28, LLC, (et. al.),	CASE NO(S). 2016-445
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - MENLO REALTY INCOME PROPERTIES 28, LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, April 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is again considered by this board following remand by the Supreme Court in *Menlo Realty Income Properties 28, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4305. We proceed to decide the matter in accordance with the court's instructions on remand, based on the notice of appeal, the statutory transcript ("S.T.") certified by the county auditor pursuant to R.C. 5717.01, and the parties' written arguments.

The subject property is a retail condominium unit located in downtown Columbus and occupied by CVS. The auditor initially valued the property, identified as parcel number 010-291773-00, for tax year 2014, at $1,600,000. The Columbus City Schools Board of Education ("BOE") filed a complaint seeking an

increase in value to $4,865,000 – the amount for which the property was reported as having sold in June

2013. At the BOR hearing, the BOE presented a conveyance fee statement and limited warranty deed as evidence of the sale. Although it did not file a countercomplaint, property owner Menlo Realty Income Properties 28, LLC ("Menlo") appeared at the hearing through counsel and presented the appraisal report and testimony of Samuel D. Koon, MAI, who opined a value of $3,900,000 for the property as of January 1, 2014.

Mr. Koon arrived at his opinion of value by using the income capitalization and sales comparison approaches to value. He relied on the subject's actual rental rate as a lease comparable, though he testified that the lease began in 2004 when the property initially improved and was therefore a "build to suit situation." S.T., Ex. E. He also relied on the June 2013 sale of the subject property and weighted it heavily in his analysis. In addition to conducting a qualitative analysis of the comparable sales, he also conducted a quantitative analysis, whereby he compared the net operating income of each comparable to the estimated net operating income for the subject property. He ultimately determined a value of $3,800,000 under the sales approach, a value of $3,900,000 under the income approach, and reconciled to a final opinion of value at $3,900,000.

After considering the evidence presented, the BOR voted to rely on the June 2013 sale as the best evidence of value, noting that the sale was conducted at arm's-length, that it was not a sale-leaseback, and that the property was not a "special purpose" property.

Menlo then appealed to this board, arguing that the June 2013 sale was not of the unencumbered fee simple interest and that reliance on the sale was not appropriate under recent changes to R.C. 5713.03. The BOE countered, arguing that a recent arm's-length sale is the best evidence of value. The parties waived their appearances at a merit hearing before this board and submitted the matter on their written arguments.

Following this board's January 3, 2017 decision finding the June 2013 sale was the best evidence of the property's value, Menlo appealed to the Ohio Supreme Court. The court vacated our decision and remanded for further proceedings in accordance with its decisions in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415 and *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4302.

The court, in *Terraza 8*, held that changes made to R.C. 5713.03 for tax year 2013 and after constituted a legislative override of the court's holding in *Berea City School Dist. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, that real property *must* be valued according to the sale price in a recent arm's-length transfer. Under the revised statute, the court held in *Terraza 8*, "a recent arm's-length sale price is not conclusive evidence of the true value of property ***." Id. at ¶30. The opponent of a sale may provide rebuttal evidence showing "that the price did not, in fact, reflect the property's true value." Id. at ¶32. Such rebuttal evidence may include evidence of market rent to demonstrate that the lease in place at the time of sale was not at market level. Id. at ¶34. Rebuttal evidence may also include appraisal evidence. *Spirit Master Funding*, supra, at ¶6, citing *Terraza 8*, supra, and *Bronx Park S. III Lancaster, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 550, 2018-Ohio-1589. We therefore proceed to once again consider the June 2013 sale and Menlo's appraisal report in determining the true value of the subject property as of January 1, 2014.

As an initial matter, there appears to be no dispute that the June 2013 sale was recent and arm's-length. Menlo argues that, because the subject property sold pursuant to an above-market lease (a "negative leasehold interest" as described in Menlo's brief to this board prior to the remand), the sale did not reflect the property's unencumbered fee simple value. The BOE does not appear to dispute that the subject was, in fact, subject to an ongoing lease at the time of sale, nor has it disputed the basic terms of the lease as represented by Mr. Koon in his report. We must therefore determine whether the lease was at market terms.

In his report, Mr. Koon provides nine rent comparables (including the subject's actual rent) and one listing. The comparables presented are all of spaces less than half as large as the subject property (which has 10,572 SF of net rental area), ranging from 1,000 SF to 4,000 SF. S.T., Ex. F at D-4. After adjusting those rents that were on a gross basis to a net basis, like the subject, Mr. Koon derived "net equivalent" rents ranging from $7.72/SF to $26.86/SF. Id. His opinion that a market rent for the subject property would be

$25/SF is the same as the rent for a 3,500 SF space in a building on the same block as the subject property that was built in 1958. Although we recognize the substantial similarity in location, we question reliance on the lease for significantly older and smaller space than the subject property. It seems likely that the higher actual rental rate for the subject property reflects the fact that the subject property is significantly newer than most other comparable spaces in the Columbus CBD.

We acknowledge that other factors may cause a lease rate to be above market, including the creditworthiness of the tenant. *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856,¶10. However, Menlo has provided this board with no analysis or evidence demonstrating what, if any, effect the creditworthiness of CVS had on its lease rate. Moreover, while Mr. Koon indicated the lease rate may have included costs to improve the space for CVS per its specifications, there is no evidence to support such statement nor is there any indication of what portion of the rental rate is attributable to such construction costs.

Based upon the foregoing, we find Menlo has failed to present probative evidence demonstrating that the subject's lease rate of $26.85/SF was above market. We further find support for the June 2013 sale price ($4,865,000, or $460.18/SF) in the data presented in Mr. Koon's report, most notably the sale of a Walgreens on Harrisburg Pike (comparable sale #3) in May 2015 for $6,963,666 (or $461.29/SF). Mr. Koon appears to have made only two adjustments to that sale: (1) downward for occupancy (comparing the comparable's 100% occupancy to an estimated 92.5% market occupancy for the subject property), and (2) upward for location (inferior compared to the subject). The amount of his overall downward adjustment is not clear from his report and testimony; however, we find comparable sale #3 a good indication of the market on tax lien date. We find it supports use of the June 2013 sale to value the subject property as of January 1, 2014.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2014, were as follows:

TRUE VALUE

$4,865,000

TAXABLE VALUE

$1,702,750

OHIO BOARD OF TAX APPEALS

UNITED DAIRY FARMERS INC., (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1912 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - UNITED DAIRY FARMERS INC.
Represented by:
STEVEN A. FIORA
TAX MANAGER
3955 MONTGOMERY RD
CINCINNATI, OH 45212

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, April 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant United Dairy Farmers, Inc. ("UDF") appeals 39 real property tax late payment penalty remission decisions of the Franklin County Board of Revision ("BOR") for the second half of 2017. UDF did not request a hearing with this board, and no party filed additional written argument. Therefore, we decide the case on the notice of appeal and the transcript certified by the auditor ("S.T.").

While UDF appeals 39 separate decisions, the facts of each are the same. UDF has a track record paying taxes late. Taxes for the first half of 2015 were due January 20, 2016, but UDF failed to timely pay on at least 43 different properties. It filed requests for penalty remission arguing it mailed the payments to the wrong address. The county appears to have granted penalty remission on all of the properties.

Taxes for the second half of 2017 were due June 20, 2018. UDF failed to make timely payment and was assessed penalties. It filed remission applications on 39 properties claiming the untimely payment stemmed from a change in personnel within its corporate tax department. UDF alleges "[d]uring this transition period from old employee to new the tax bills went unpaid until they were found on 7/5." UDF only applied for remission under R.C. 5715.39(C), which requires remission when failure to timely pay was due to reasonable cause and not willful neglect. The auditor and treasurer recommended denial of the applications because of UDF's late payment history, and the BOR ultimately denied the requests.

Remission of late payment penalties is governed by R.C. 5715.39. That statute requires penalty remission for the following reasons:

> "(1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.
>
> (3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.
>
> (4) The taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.
>
> (5) With respect to the first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer." R.C. 5715.39(B).

Remission is mandatory if a taxpayer qualifies under R.C. 5715.39(B). *Holmes v. Testa* (Feb. 27, 2018), BTA No. 2017-400, unreported. The BOR must also remit penalties if a "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

Again, UDF only applied under R.C. 5715.39(C). But, we find UDF has not carried its burden of showing its failure to pay was due to reasonable cause. UDF did not request a hearing with this board to present evidence. The transcript shows UDF has made delinquent payments on multiple parcels over multiple years, including the year at issue. We are unable to conclude UDF's failure to pay the second half of 2017 was due to reasonable cause.

While UDF did not apply under R.C. 5715.39(B), we note none of those provisions apply. There is no dispute UDF received the tax bills so R.C. 5715.39(B)(2) and (5) cannot apply. UDF is a corporate taxpayer so R.C. 5715.39(B)(3) does not apply. UDF does not claim it timely postmarked the payments so R.C. 5715.39(B)(4) cannot apply. Finally, we see no evidence the treasurer or auditor erred in their duties, which means R.C. 5715.39(B)(1) is inapplicable.

Because UDF has failed to carry its burden, we affirm the decisions of the BOR denying penalty remission.

OHIO BOARD OF TAX APPEALS

MARGARET MICHEL, (et. al.), Appellant(s), vs. UNION COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1806 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - MARGARET MICHEL
OWNER
1000 MAPLE STREET
MARYSVILLE, OH 43040

For the Appellee(s) - UNION COUNTY BOARD OF REVISION
Represented by:
RICK RODGER
ASSISTANT PROSECUTING ATTORNEY
UNION COUNTY
221 WEST 5TH STREET, SUITE 333
MARYSVILLE, OH 43040

Entered Tuesday, April 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Margaret Michel appeals from a decision of the Union County Board of Revision ("BOR") dismissing two valuation complaints as untimely. Ms. Michel testified at this board's hearing, but the BOR did not send a representative. We consider the matter on the notice of appeal, the transcript certified by the auditor ("S.T."), and the record of this board's hearing ("H.R.").

The salient facts are undisputed. A qualified complainant may file a valuation complaint with the BOR "on or before the thirty-first day of March of the ensuing tax year." R.C. 5715.19. When March 31 falls on a weekend or holiday, the final day to timely file a complaint is the following business day. R.C. 1.14; *Yes We Can Community Homes, Inc. v. Allen Cty. Bd. of Revision* (Dec. 26, 2018), BTA No. 2018-393, unreported; *Sidney City Schools Bd. of Edn. v. Shelby Cty. Bd. of Revision* (Jan. 26, 2016), BTA No. 2015-1650, unreported.

Complaints for tax year 2017, like the complaints here, were to be filed before or on March 31, 2018. However, March 31, 2018 was a Saturday, and, per R.C. 1.14, a complaint could be submitted on the next business day, i.e., April 2, 2018. Ms. Michel testified she hand-delivered both complaints on April 2, 2018 since the auditor's office was closed on March 31, 2018. The BOR timestamped both complaints April 2, 2018. Accordingly, Ms. Michel timely filed the complaints.

Here, the BOR erred by dismissing the complaints as untimely. Ms. Michel expressed her concern at our

hearing that some of the evidence she provided to the BOR with the complaint were lost because they were not included in the statutory transcript. She specifically noted several documents and photographs she supplied with the complaint. See R.C. 5715.085 (BOR shall preserve "documentary evidence offered on each complaint"); R.C. 5717.01 (BOR shall certify a transcript to the Board of Tax Appeals including all evidence offered in connection with the original complaint).

Accordingly, we hereby reverse the BOR's decision. We remand this case to the BOR for further proceedings on the merits of Ms. Michel's complaints against the tax year 2017 values of parcel numbers 2900071470000 and 2000010160000. See R.C. 5715.11.

OHIO BOARD OF TAX APPEALS

COREX PARTNERS LLC/CHOU KATELLA PARTNERS LLC, (et. al.),	CASE NO(S). 2018-1602
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COREX PARTNERS LLC/CHOU KATELLA PARTNERS LLC
Represented by:
ROBERT C. WOOD
ATTORNEY
68 NORTH HIGH STREET
SUITE 202
NEW ALBANY, OH 43054

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

BOARD OF EDUCATION OF THE WESTERVILLE CITY SCHOOLS
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, April 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants, limited liability companies, appeal from a decision of the Franklin County Board of Revision ("BOR") dismissing a continuing complaint hearing request for tax years 2014 and 2015. Appellants and the appellee school board both filed written argument. We now decide the case on the notice of appeal, the transcript certified by the auditor ("S.T.") and the parties' written arguments.

The original valuation complaint in this case was filed for tax year 2011. The auditor valued the subject property, i.e., parcel number 600-183730, at $4,500,000 for tax year 2011, and appellants filed a decrease

complaint with an opinion of value of $1,850,000 in accordance with a December 2011 sale. The BOR issued a decision on October 8, 2014, valuing the subject at $1,850,000 for tax years 2011-2013. 2014 was a triennial update year for Franklin County.

The school board appealed that decision to this board. See *Bd. of Edn. of the Westerville City Schools. v. Franklin Cty. Bd. of Revision* (July 27, 2015), BTA No. 2014-4463, unreported (*Chou Katella I*). This board affirmed the BOR finding the December 2011 was a recent, arm's-length sale. Id. at 7. No party appealed our decision in *Chou Katella I.*

While *Chou Katella I* was pending, the auditor valued the subject at $4,500,000 for tax years 2014 and 2015. On June 30, 2016, appellants requested a continuing complaint hearing for tax years 2014-2015. The BOR held a hearing and valued the subject property at $1,850,000 for tax year 2014 and $2,475,000 for tax year 2015. The school board appealed. See *Chou Katella v. Franklin Cty. Bd. of Revision* (Sept. 11, 2017), BTA No. 2016-2173, unreported (*Chou Katella II*). In *Chou Katella II*, we vacated the BOR's 2013-2014 decision finding the BOR lacked continuing complaint jurisdiction on the basis of our holding in *MDM Holdings v. Cuyahoga Cty. Bd. of Revision* (June 2, 2015), BTA No. 2015-60, unreported.

Appellants filed an appeal with the Tenth District and then petitioned the Ohio Supreme Court for a transfer of jurisdiction. The Ohio Supreme Court denied the transfer of jurisdiction. Once Tenth District lifted its temporary stay, it determined appellants failed to comply with R.C. 5717.04 because they did not properly serve the appellees. Appellants did not ask the Supreme Court to take jurisdiction after the Tenth District dismissed the case.

After the Tenth District dismissed *Chou Katella II*, appellants asked the BOR for another continuing complaint hearing on the same tax years, 2014-2015 since this board vacated the prior decision. Appellants argued they were entitled to a hearing and decision based on the Ohio Supreme Court's decision in *MDM Holdings v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 555, 2018-Ohio-541. The BOR denied the request finding it had already held such a hearing. Appellants filed a notice of appeal with this board arguing this board should require the BOR to reconsider the tax years at issue in *Chou Katella II*. The school board argues
1) no provision in R.C. 5715.19 permits multiple continuing complaint hearings, and
2) res judicata. Essentially, the school board claims appellants had their chance to litigate these years but botched the appeals to the Tenth District by failing to comply with the appeal statute. Res judicata, says the school board, does not permit the appellants to relitigate the same years to save itself from its own failed appeal. We discuss each argument in turn.

R.C. 5715.19(D) provides, in relevant part:

> "If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section."

According to the school board, that provision means a party cannot file multiple continuing complaints. Otherwise, it argues, "a new complaint would never have to be filed, and a complainant could just request a continuing complaint time and time again." It argues that "[t]ax years 2014 and 2015 were finally determined on May 3, 2018 when the Court of Appeals issued a decision dismissing the case for those years ***. Thus, as of May 3, 2018, the value of the Subject Property for tax years 2014 and 2015 could no longer be challenged."

However, the Supreme Court has repeatedly held this board cannot impose requirements not explicitly found in R.C. 5715.19. See *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 238, 2018-

Ohio-230; *MDM Holdings*, supra. The Supreme Court in *Life Path* specifically stated there was no clear deadline for requesting continuing complaint jurisdiction, holding, "[i]f the lack of a deadline is a problem, it is up to the General Assembly to make an easy fix." Id. at ¶ 10; see also *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 305, 306 (1999) (continuing complaint jurisdiction could be requested in 1997 even though original litigation ended in 1996); *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶ 7. Here, we are unable to find the statute bars appellant's continuing complaint hearing request as untimely; we cannot impose stricter requirements than the statute imposes. See *MDM Holdings*, supra.

Turning to the issue of res judicata, the school board argues appellants cannot have a second bite at the apple, but appellants argue they never got a first bite since this board vacated the BOR's determination in *Chou Katella II*. Res judicata "may, under appropriate circumstances, be applied to decisions rendered by administrative bodies." *Girard v. Trumbull Cty. Budget Comm.*, 70 Ohio St.3d 187, 193 (1994). However, we find res judicata does not apply in this case given nature of our decision in *Chou Katella II*.

First, our decision in *Chou Katella II* was a jurisdictional determination, not a merit determination of value. Res judicata does not apply when the parties did not have an adequate opportunity to litigate an issue, e.g., because the litigation was cut short by a jurisdictional dismissal. *Doan v. S. Ohio Admin. Dist. Council*, 145 Ohio App.3d 482 (10th Dist.2001) (quoting *United States v. Utah Construction & Mining Co.*, 384 U.S. 394 (1966)). Accordingly, the issue of value is not claim precluded on that basis. Second, our decision in *Chou Katella II vacated* the decision of the BOR. Our decision was never overturned or modified by any higher court, neither the Tenth District or the Ohio Supreme Court. Vacate "means to annul, set aside, or render void." *Ohio Fuel Gas Co. v. City of Mt. Vernon*, 37 Ohio App. 159, 166 (5th Dist.1930); *Union Trust Co. v. Lessovitz*, 1225 Ohio St. 406 (1930). A vacated decision is no longer authoritative or binding. See *Boggs v. Columbus Steel Castings Co.*, 10th Dist. Franklin No. 04-AP-1239, 2005-Ohio-4783, ¶ 16. As a consequence, today, there is no authoritative BOR decision alive and well for tax years 2014 and 2015.

Therefore, since there is no binding BOR decision for those years, the remaining question is whether appellants' request for a hearing in June 2015 or June 2018 is valid because the BOR still has jurisdiction over tax years 2014 and 2015. While, the *Life Path* court acknowledged that the "mechanics" of how a party asserts continuing complaint jurisdiction is "less clear," the court did find correspondence filed with the BOR to be sufficient. Here, appellants sent two letters to the BOR: one on June 30, 2016 and another on June 14, 2018. Clearly, the June 2016 was well before the Tenth District decided *Chou Katella II*, and the June 2018 approximately one month after that decision. Per the Supreme Court's holding in *Columbus Board of Edn.*, supra, even a request filed a year after the original complaint litigation ceases is a valid continuing complaint request. While we understand the school board's argument that a party can simply request "a continuing complaint time and time again," *Life Path* was very clear this board cannot enact limits not clearly found in the statute.

Per *Life Path* and *MDM*, we hold the BOR must consider the value of parcel number 600-183730 for tax years 2014 and 2015, because appellants have requested that of the BOR and because there is no active decision of the BOR on those years. Again, we annulled the prior decision in *Chou Katella II*. Accordingly, the decision of the BOR denying a continuing complaint request hearing is reversed, this case is remanded to the BOR to consider tax years 2014 and 2015.

OHIO BOARD OF TAX APPEALS

MICHAEL JAMES WEIR, (et. al.), Appellant(s), vs. WAYNE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1409 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL JAMES WEIR
Represented by:
MICHAEL WEIR
6161 PRARIE LANE
WOOSTER, OH 44691

For the Appellee(s) - WAYNE COUNTY BOARD OF REVISION
Represented by:
ANDREA UHLER
ASSISTANT PROSECUTING ATTORNEY
WAYNE COUNTY
115 WEST LIBERTY STREET
WOOSTER, OH 44691

Entered Wednesday, April 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Michael James Weir appeals from a decision of the Wayne County Board of Revision ("BOR") valuing the subject property at $160,350 for tax year 2017. Mr. Weir argues the value should be $133,000. We now consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, this board's hearing record ("H.R."), and the exhibits submitted at this board's hearing.

Mr. Weir purchased the subject, then unimproved, in 2009. He later constructed a home on the subject. H.R. at 11. The county auditor valued the subject at $160,350 for tax year 2017, and Mr. Weir filed a decrease complaint with an opinion of value of $139,430. S.T., Ex. A. The complaint cites R.C. 5715.19(2), R.C. 5713.17, and R.C. 5713.01. Mr. Weir also wrote "substantial improvement $2000" and "decrease in value due to property occupancy." The final line of the justification section reads "new construction—receipts of all labor/materials." The BOR held a hearing; Mr. Weir presented his testimony and over 100 pages of evidence ranging from newspaper articles about property values to expense invoices. See generally S.T., Ex. F. From those documents, he argued the subject's value should be decreased because of negative characteristics, e.g., noise pollution from a local shooting range, traffic problems, depreciation of the home. He also argued the auditor overvalued the subject because newspapers and some government publications stated property values were dropping.

County appraiser Kelly Hettick testified and submitted a summary report at the BOR hearing. He recommended the BOR reject Mr. Weir's evidence. In support, Mr. Hettick compared sales of five

comparable parcels, which he argued showed the subject was valued in line with market prices. In fact, he argued the subject could be undervalued and suggested that if obsolescence were not considered, the market value would likely be approximately $202,210. The BOR affirmed the auditor's value finding it was supported by market data and finding Mr. Weir failed to carry his burden. The BOR specifically noted Mr. Weir's insurer agreed to insure the house up to $150,000, which is higher than Mr. Weir's opinion of value.

Mr. Weir appealed to this board. His notice of appeal has an opinion of value of $133,000, which is less than the $139,430 he sought on the valuation complaint. This board held a hearing, and Mr. Weir generally reargued the same points he made to the BOR. He also offered a recent utility bill, a website printout on heat pumps, and law enforcement data on local traffic activity. The county appellees provided the testimony and newly-drafted appraisal of Mr. Hettick, who opined a value of $185,000 as of January 1, 2017.

Before analyzing applicable valuation law, we note Mr. Weir argued at this board's hearing that he is entitled to valuation decreases on years prior to 2017 as well. He claimed that he is challenging the past several years in addition to 2017. The county appellees argued the only year at issue is tax year 2017. We agree the only year at issue is 2017. First, Mr. Weir presented only the 2017 decision with his notice of appeal to this board. Second, Mr. Weir's 2017 complaint cannot relate back to prior years as a matter of law.

> It is well settled that each tax year stands on its own. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, ¶ 16; *Trebmal v. Cuyahoga Cty. Bd. of Revision* (Nov 24, 1993), BTA No. 1991-M-269, unreported. Ohio law gives property owners "an established process***to challenge the valuation of a parcel." *Talarek v. Walls*, 9th Dist. Lorain No. 17CA011158, 2018-Ohio-1174, ¶ 9; *Sunstar Akron, Inc. v. Summit Cty. Bd. of Revision*, 9th Dist. Summit No. 26460, 2013-Ohio-682, ¶¶ 1-5; *Colvin v. Summit Cty. Bd. of Revision*, 9th Dist. Summit No. 26329, 2012-Ohio-5394, ¶¶ 6-8. As the Ninth District noted in *Colvin*, supra, "R.C. 5715.19 regulates the manner in which a person or entity may dispute the determination of the total valuation or assessment of any parcel that appears on the tax list***." (Internal quotation omitted.) Id. at ¶5. R.C. 5715.19(A) states a party must file "a complaint***with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of year and public utility property taxes for the current tax year, whichever is later." R.C. 5715.19(A) and (D) only permit a complaint against valuation for a "current" tax year, not prior years. *Olmsted Falls*, supra, at ¶ 16-17. While a complaint can sometimes relate forward under the Supreme Court's "continuing complaint" rule, the complaint cannot relate back to prior years. Accordingly, Mr. Weir may not challenge those prior years with the 2017 complaint under R.C. 5715.19 and *Olmsted Falls*, supra.

> The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Columbus City. Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7.

The Supreme Court has long held "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, Mr. Weir purchased the then-unimproved subject in 2009, which is eight years before the tax-lien date. While the Supreme Court has rejected a bright-line rule, a sale that occurs more than 24 months before tax-lien date is not generally recent. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio S.3d 92, 2014-Ohio-1588, ¶¶ 1-2. No party to this appeal asks us to adopt the 2009 sale price, and we find no evidence in the record to suggest "the sale

[continues] to be a reliable indication of value despite the passage of time." Gallick, supra,at 3 (citing *Akron City School*, supra). Mr. Weir purchased the subject during a time when land values were depressed, and the subject's character improved dramatically when Mr. Weir constructed the house in 2010. Accordingly, we cannot rely on the sale as competent evidence of value.

In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation.*** [T]he best way to challenge a valuation is with a proper appraisal."). In the present appeal, only one party—the county appellees—presented a qualifying appraisal report for this board to utilize. Before discussing that appraisal in detail, we consider Mr. Weir's evidence in support of his proposed value.

Mr. Weir made several arguments to the BOR and this board with varying levels of specificity. We group the arguments for clarity. Mr. Weir first argues the subject suffers from negative conditions that impact the value. He testified the subject is burdened by excessive noise from a nearby shooting range as well as crime and substantial traffic. He also testified the house needs some repairs, suffered a flood, needs a new roof, and suffers from general wear-and-tear. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra,at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). While those negative characteristics could conceivably affect value, a party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶ 7. A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*, supra). Here, the impact those alleged conditions could have on value is not self-evident. Accordingly, we cannot rely on the evidence of the subject's negative characteristics to adjust the subject's value.

Next, Mr. Weir has offered some testimony on market data. He began at the BOR hearing by stating there is "nothing comparable" to the subject, but he did eventually offer some general testimony on the market. Having reviewed the statutory transcript and the evidence offered at our hearing, it appears Mr. Weir submitted essentially no documentary evidence to substantiate his testimony on the local market. Because there is no indication Mr. Weir had firsthand knowledge about the specific details of the local sales he references, we can only conclude his testimony on the market amounts to unreliable hearsay. The Ohio Supreme Court has held "the owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19. We also cannot find Mr. Weir's census and newspaper evidence sufficient to warrant a reduction. He relies on those documents to show property values in some areas are decreasing. However, more is necessary to prove the subject is overvalued. As the Ohio Supreme Court has held, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). Accordingly, we must, and do, disregard Mr. Weir's uncorroborated testimony about market sales and the auditor's valuation of other parcels.

Third, and finally, Mr. Weir argues his value is justified because he has calculated what he "put into the property." Mr. Weir states he took the price he paid for the land in 2009 then added the cost to build the home plus other expenses. He supplied invoices and the contract with the builder from 2009-2010. While evidence of costs could be probative to a cost approach valuation, Mr. Weir's evidence would need to be applied through a cost approach appraisal to be competent and probative evidence of value. As we noted above, "dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra,at 4. The contracts Mr. Weir used the build the house and the mortgage documents "are simply variables in search of an equation."

Rozzi, supra. It is also not self-evident, even unlikely, that the cost of the home in 2010 is the same as the replacement cost as of January 1, 2017.

Many of Mr. Weir's arguments are based on his subjective opinion of value. We must note he appears to have a few fundamental misunderstandings about real property valuation law. To be sure, an owner is entitled to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). That value is the true value in money as valued by the market. While an owner might be an expert in the subject property, an owner is generally not an expert in valuation or the market. The weight to be accorded an owner's opinion is left to the sound discretion of this board. *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975). The Supreme Court has also held "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments*, supra. Here, Mr. Weir was unable to establish his expertise in property valuation. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative). Accordingly, we must find he has failed to carry his burden and is not entitled to the reduction.

Having rejected Mr. Weir's evidence, we now turn to the county appellees' evidence. As mentioned above, we must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr.*, supra. As the finder of fact, we have "wide discretion to determine the weight and credibility of witnesses; thus [this board] may accept all, part, or none of the testimony of a witness." *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 47 (1991). Here, the county appellees presented the appraisal report and testimony of appraiser Hettick. The credibility, competence, skill, and ability of an appraiser is essential because value cannot be ascertained with scientific certainty. *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Oct. 19, 2010), BTA No. 2008-K-391, unreported. Mr. Hettick is a certified appraiser and has been employed by the auditor for approximately five years and has been qualified as an expert. H.R. at 20.

Having reviewed the evidence, we find Mr. Hettick's report and testimony credible. Accordingly, we find the BOR demonstrated that the subject's value on January 1, 2017 was $185,000. Mr. Hettick valued the subject using a sales comparison and cost approach to value. With a sales comparison approach, "the appraiser develops an opinion of value by analyzing closed sales, listings, or pending sales of properties that are similar to the subject." The Appraisal of Real Estate (14th Ed.2013)). As noted in *Baer v. Montgomery Cty. Bd. of Revision* (Jan. 10, 2012), BTA No. 2009-Q-978, unreported, the sales comparison approach requires the appraiser to look for "differences between the comparable sale properties and the subject property using elements of comparison." Then, the appraiser adjusts "the price of each sale property to reflect how it differs from the subject." Id. (quoting The Appraisal of Real Estate (12th Ed.2001)). The appraiser may consider and adjust many elements. "One element of comparison used is the physical characteristics of the comparable property, i.e., building size, quality of construction, building materials, age, condition, site size, attractiveness, and amenities." Id. The sales comparison approach is generally appropriate for single-family homes because of the significant market data available. See, e.g., *Ducca v. Geauga Cty. Bd. of Revision* (Oct. 3, 2018), BTA No. 2018-240, unreported.

Page one of the appraisal summarizes the subject and local market. The information in the appraisal matches the data in the parcel card, which no party disputes is incorrect. Mr. Hettick noted the property consists of approximately 3 acres improved with a 1,762 square foot residence. Compare H.R., Ex. A with S.T., Ex. C. Mr. Hettick used that information to develop a sales comparison. H.R., Ex. A. He used five comparable sales, all of which sold "within a range of 24 months prior" to tax-lien date or up to "12 months after." All five comparables are similar to the subject in square footage and acreage. All are ranch-style homes just like the subject home. Using his expertise, Mr. Hettick appropriately adjusted each comparable on various characteristics, e.g., location, site, utilities, presence of a fireplace, and gross living area. Mr. Hettick opined "[i]f this parcel was placed on the market in 2018, it would almost certainly sell for

$200,000 or more." He also noted the local demand for ranch homes is significant. He wrote "ranch homes currently have an appreciation rate of 10% annually which is higher than any other style of dwelling. Ranch homes often sell within 30 days and for more than the listing price." His final sales comparison valuation was $185,000.

Mr. Hettick also developed a cost approach valuation. The cost approach values a subject "based on a comparison with the cost to build a new or substitute property. The cost estimate is adjusted for the depreciation evident in the existing property." The Appraisal of Real Estate (14th Ed.2013), at 561. The approach requires adjustments to account for deferred maintenance, incurable short-lived items, incurable long-live items, functional obsolescence, and external obsolescence. Id. at 563. Here, Mr. Hettick pulled his data from Marshall & Swift, which we have recognized as a reliable source of cost data. See, e.g., *N. Royalton City Sch. Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Dec. 12, 2012), BTA No. 2009-A-723, unreported. Mr. Hettick "balanced" that data with "actual construction costs from 2014." Assuming some physical depreciation, Mr. Hettick calculated a cost approach value of $181,360.

He then reconciled the two approaches and found the sales approach more reliable. He specifically noted the construction costs Mr. Weir provided were several years old and "not representative of current construction costs." Accordingly, he formulated a final opinion of value of $185,000. This board also found the appendix to Mr. Hettick's report very helpful. Therein, Mr. Hettick responded to each of Mr. Weir's claims, and Mr. Hettick explained how his appraisal addressed each of the arguments.

In conclusion, we find Mr. Hettick's appraisal to be the best evidence of value. We order the auditor to value the subject in accordance with the following values for tax year 2017:

PARCEL 30-00351.010

TRUE VALUE

$185,000

TAXABLE VALUE

$64,750

OHIO BOARD OF TAX APPEALS

SANDRA HANRAHAN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-307 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SANDRA HANRAHAN
OWNER
2224 SO. BELVOIR BLVD.
UNIVERSITY HTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 1, 2019, the appellant filed an application for remission with this board. The record does not demonstrate that a decision was issued on the application by either the county treasurer, county fiscal officer, or county board of revision.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly,

this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GERALD & MARILYN KRAMER, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-2226

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s) - GERALD & MARILYN KRAMER
Represented by:
GERALD KRAMER
1 BRATENAHL PLACE
SUITE #510
BRATENAHL, OH 44108

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On December 19, 2018, the appellants filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on November 19, 2018. Appellants did not include a copy of a BOR decision. The county appellees attached to their motion a certification that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CINDY L. RICE, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-2047 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CINDY L. RICE
10874 MARIAN LANE
DAYTON, OH 45458

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Thursday, April 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On November 23, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the record keeper that there is no record of a decision issued for any such application.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly,

this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

AUBURN PARKING LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-349, 2018-364

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AUBURN PARKING LLC
Represented by:
BILL J. GAGLIANO
ULMER & BERNE LLP
SKYLIGHT OFFICE TOWER
1660 WEST 2ND STREET, SUITE 1100
CLEVELAND, OH 44113-1448

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Thursday, April 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

In these consolidated cases, both Auburn Parking LLC ("Auburn") and the Cleveland Metropolitan Schools Board of Education ("BOE") appeal from a decision of the Cuyahoga County Board of Revision ("BOR"). Both parties requested a hearing, but then both waived their appearances. Neither party filed written argument. We now consider the matter upon the notices of appeal and the transcript certified by the fiscal officer ("S.T.").

The subject is a single parcel improved with a parking garage, which Auburn purchased in 2014 for $2,970,000. The BOE filed an increase complaint for tax year 2015, and the subject was ultimately valued at $2,100,000. There is some ambiguity in the record about whether the fiscal officer carried that value forward to tax year 2016. The parcel card shows a value of $2,100,000 for tax year 2016. Likewise, the

complaint and counter complaint state the 2016 taxable value was $735,000, which would render a true value of $2,100,000. However, the BOR decision states the fiscal officer valued the subject at $2,970,000. No party availed themselves of a hearing before this board or filed written argument to explain the discrepancy. Regardless, we need not resolve that discrepancy because, as explained below, we find the BOR should have dismissed both the complaint and the counter complaint.

For tax year 2016, the BOE filed an increase complaint with an opinion of value of $8,000,000, and Auburn filed a counter complaint requesting the fiscal officer's value be affirmed. Both parties were represented by counsel, but neither called any witnesses, relying solely on documentary evidence. At the BOR hearing, the BOE amended its opinion of value to $4,000,000, and Auburn amended its value to $6,837,900. Auburn admitted it wanted the taxes increased, but the subjective reason Auburn wanted the taxes increased is unclear from the record. We note this parcel was the subject of a partial exemption appeal that was remanded to the Tax Commissioner for further proceedings. *Auburn Parking v. Testa* (Apr. 17, 2018), BTA No. 2016-2136, unreported.

The BOE presented its case first. Its counsel alleged Auburn spent several years renovating the subject; however, according to the BOE, the fiscal officer did not adjust the 2016 value to account for the improvements made between 2015 and 2016. The BOE also presented unadjusted market data in support. The BOE did not submit an appraisal. Early in the hearing, the BOR raised the fact that the BOE's complaint was the second filed in the same triennial interim period. The BOR asked the BOE whether it would be presenting evidence that "substantial improvement was added to the property," in order to justify a second complaint during the same interim period. See R.C. 5715.19. The BOE conceded it was not presenting any additional evidence of improvements. Instead, the BOE simply argued that if the BOR dismissed the complaint as an improper second complaint, then Auburn's counter complaint had to be likewise dismissed per *C.I.A. Properties v. Cuyahoga Cty. Bd. of Revision*, 89 Ohio St.3d 363 (2000).

Then Auburn presented its case. Auburn, again claiming it wanted the taxes raised, said it would stipulate that substantial improvements had been completed. Therefore, Auburn argued, neither complaint should be dismissed. Auburn offered no testimony on what improvements, if any, had been completed or when they were completed. It offered only an initial certificate of occupancy, a final certificate of occupancy, and an income and expense statement. No witness authenticated or provided a foundation for the documents.

The BOR rendered a written decision stating:

> "School Board failed to meet their burden that there was a substantial improvement on the property. Therefore this is a 2nd filing not permitted by law. The property owner amended their counter-complaint to $6,837,900 without any evidence to substantiate their new value. A temporary certificate of occupancy, one page income/expense statement, and final certificate of occupancy does not support the owner's opinion of value. No change."

Both parties appealed to this board. Both parties requested a hearing. Both parties waived their appearance at that hearing. Neither party filed written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to

sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

We begin, as we must, with the jurisdictional question of whether the BOE's complaint should have been dismissed along with the counter complaint. The BOE filed a complaint for tax year 2015, which was a triennial update year for Cuyahoga County. Unless an exception applies, R.C. 5715.19(A)(2) "generally prohibits a complainant from filing two complaints during a triennial 'interim period.'" *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 141 Ohio St.3d 43, 2014-Ohio-4511, ¶ 20. The parties do not dispute the BOE filed a complaint for tax year 2015. They likewise do not dispute tax years 2015 and 2016 are in the same interim period for Cuyahoga County. See R.C. 5715.24. Accordingly, the only way the complaint was proper is if an enumerated exception applied. The Ohio Supreme Court has been very clear that R.C. 5715.19(A)(2) limits the jurisdiction of the BOR. If a prior complaint was filed and no exception applies, the BOR lacks jurisdiction and must dismiss the complaint. *Soyko*, supra, at ¶¶ 30-35.

R.C. 5715.19(A)(2)(a) lists the following exceptions to the prohibition against multiple filings:

> "(a) The property was sold in an arm's-length transaction, as described by section 5713.03 of the Revised Code;
>
> (b) The property lost value due to some casualty;
>
> (c) Substantial improvement was added to the property;
>
> (d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property."

The exceptions only apply if the change, improvement, or occurrence, occurs after tax-lien date for the prior year in which the valuation change is sought and such circumstance was not taken into consideration with respect to the prior complaint. R.C. 5715.19(A)(2). *Developers Diversified Ltd. v.Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998); *Soyko*, supra, at ¶23-26.

Here, the BOE relied solely on R.C. 5715.19(A)(2)(c), which permits a second complaint when "[s]ubstantial improvement was added to the property." At hearing when questioned by the BOR, the BOE conceded it intended to offer no evidence to show there had been substantial improvements. The BOE offered no witnesses, and the documentary evidence it submitted does not show the subject was substantially improved. For example, the property summary sheet the BOE offered does show a permit was issued in 2016 for property alterations, but it shows "0%" under "Percent Complete." We are also unable to determine whether substantial improvements were made solely from the parcel card. One note simply says alterations were not complete as of January 1, 2016; there are no additional details about the kind of improvements or whether those improvements were substantial. Accordingly, we find the BOE failed to present evidence of substantial improvements sufficient to vest jurisdiction in the BOR.

At the hearing, Auburn attempted to cure the deficiency by stating it would stipulate to the substantial improvements. However, the burden is on the complainant to vest jurisdiction with the BOR. *C.I.A. Properties v. Cuyahoga Cty. Bd. of Revision*, 89 Ohio St.3d 363 (2000). The Ohio Supreme Court has long recognized a BOR is a creature of statute with limited subject matter jurisdiction. *Yes We Can Community Homes, Inc. v. Allen Cty. Bd. of Revision* (Dec. 26, 2018), BTA No. 2018-393, unreported. A party cannot stipulate to the subject matter jurisdiction of an administrative body like a party can stipulate to the subject matter jurisdiction of a judicial body. *Yes We Can*, supra, at 3-4. The Tenth District explained:

> "It is well settled that lack of subject matter jurisdiction may be raised at any stage of the proceedings. Parties may not, by stipulation or agreement, confer subject matter jurisdiction on a court or administrative body where such jurisdiction does not otherwise exist. Further, it is a fundamental proposition that just as parties cannot confer subject matter jurisdiction by consent, subject matter jurisdiction cannot be acquired based upon a theory of estoppel or waiver arising from the acts of the parties or their agents." (Internal citation omitted.)

Huffman v. Huffman, 10th Dist. Franklin No. 02AP-101, 2002-Ohio-6031, ¶ 37. Accordingly, Auburn could not have stipulated to the substantial improvements in order to vest subject matter jurisdiction in the BOR.

Even if we assume Auburn's evidence could cure the jurisdictional defect, we find the evidence Auburn submitted does not show substantial improvements were made to the subject. The certificates of occupancy provide no detail about how the subject was improved. The income and expense statement provides little additional detail. For example, it is unclear what accounting period is covered by the report. We also note

the report was prepared by a separate company ABM but offered by Auburn.

We now address whether the BOR should have dismissed the counter complaint. The BOE argued below that if the complaint was dismissed for want of jurisdiction, then the counter complaint should likewise be dismissed under *C.I.A. Properties*, supra. We agree. The Ohio Supreme Court recently addressed this topic in *Licking Heights Local Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 157, 2018-Ohio-3255 ("*CKProperty*"). Reaffirming *C.I.A.*, the *CKProperty* court held a BOR lacks jurisdiction to consider a counter complaint when the original complaint is jurisdictionally deficient. Id. at ¶ 11-15. Because the complaint in this case was jurisdictionally deficient, we find the BOR should have dismissed the counter complaint as well because the complaint was jurisdictionally deficient.

Accordingly, we remand this case to the BOR with instructions to vacate its decision and dismiss the complaint and counter complaint, the practical effect being reinstatement of the fiscal officer's initial value. As explained above, we are unable to ascertain the correct fiscal officer's value from the record. We leave that issue to be resolved below by the fiscal officer.

OHIO BOARD OF TAX APPEALS

MIAMISBURG CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1644
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - MIAMISBURG CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MITCHELL L. STITH
SCOTT SCRIVEN LLP
250 EAST BROAD STREET
SUITE 900
COLUMBUS, OH 43215

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

CHRISTOPHER & MELISSA RAUCH
809 PLUM STREET
MIAMISBURG, OH 45342

Entered Thursday, April 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is before the Board of Tax Appeals upon the filing of a motion for remand filed by the appellant board of education ("BOE"). By way of the motion, the BOE asserts that the board of revision ("BOR") lacked authority to issue a decision in this matter because, in essence, there was no complaint or countercomplaint before it. Neither the complainant, property owners, nor county appellees responded to the motion. Based upon the record before us, the motion to remand is granted.

A review of the statutory transcript demonstrates the following. A complaint was filed with the BOR, which requested that the values of parcels K46 00104 0012 and K46 01727 0030 be reduced for tax year 2017. The complaint identified Christopher and Melissa Rauch as the owners; however, "Tax Ease – Dawn Hoosier" was identified as the non-owner, complainant in its capacity as "[t]ax [l]ien [h]older." Statutory Transcript at Complaint. The BOR assigned the complaint as BOR #2435. Apparent from the record, the

BOE filed two separate countercomplaints (one for each parcel) because the two listed parcels had two different unaffiliated owners, i.e., the Rauchs owned parcel K46 00104 0012 and Lisa Staggs owned parcel K46 01727 0030

In addition, it appears separate, duplicative complaints were filed for each parcel and assigned BOR case numbers - K46 00104 0012 was assigned BOR #2117, and K46 01727 0030 was assigned BOR #2119. The BOE again filed countercomplaints against each complaint.

The BOR held a consolidated hearing on all three complaints and their respective countercomplaints. As the hearing commenced, BOR member Linda Martin noted that the parties in the matter, BOR #2435, agreed to withdraw their respective complaint and countercomplaint given the duplicative filings, and the hearing proceeded to the merits of BOR #2117 and BOR #2119. Despite the withdrawals of the complaint and countercomplaint for BOR #2435, the BOR proceeded to issue a decision under that BOR case number that reduced the value of parcel K46 00104 0012, from $88,340 to $55,150, and a decision that retained the initially assessed value of parcel K46 01727 0030, $163,610. Thereafter, the BOE appealed the BOR's decision in BOR #2435 *only* as to parcel K46 00104 0012. (We note that the BOR issued a separate decision on the value of parcel K46 00104 0012 under BOR #2117, and that the BOE appealed that decision to this board, where we docketed it as BTA No. 2018-1646.)

As noted above, the BOE has filed a motion to remand, which asserted that the BOR lacked jurisdiction to issue the decision in this matter because the complaint and countercomplaint were withdrawn by the complainant and BOE, respectively.

Though boards of revision have authority to hear and to decide complaints, see R.C. 5715.11 and R.C. 5715.19, in this matter, the withdrawal of the complaint and countercomplaint demonstrated the parties' desire to preclude such authority over BOR #2435. The Supreme Court has previously held that "withdrawal [of a complaint] is permissible unless it will prejudice the rights of other parties to the proceeding." *May Dept. Stores v. Bd. of Revision*, 49 Ohio St. 2d 183, 188 (1977). Accord *Licking Hts. Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 157, 2018-Ohio-3255. Here, apparent from the record, only the county appellees could have been prejudiced by the withdrawal of the complaint and countercomplaint. However, they have failed to come forward to assert, or to demonstrate, that their rights were prejudiced by such actions. Thus, we must conclude that the withdrawals of the complaint and countercomplaint deprived the BOR of authority to issue a value decision in BOR #2435.

Based upon the forgoing, this matter is remanded to the BOR with instructions to vacate its decision over the complaint and countercomplaint in BOR #2435.

OHIO BOARD OF TAX APPEALS

STANLEY A. YOUNG, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-708 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STANLEY A. YOUNG
Represented by:
JEFFREY P. POSNER
ATTORNEY AT LAW
3393 NORWOOD ROAD
SHAKER HTS., OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Stanley A. Young appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing parcel 734-12-020 for tax year 2017. Both parties waived their appearance at this board's hearing. We now decide the matter on the notice of appeal and the transcript certified by the fiscal officer ("S.T.").

[2] Appellant purchased the subject property, a lot and residence, in 1999 but has made significant updates since that time. The fiscal officer valued the subject at $483,000 for tax year 2017, and appellant filed a decrease complaint with an opinion of value of $434,000 on the basis of obsolescence. At the BOR hearing, appellant relied on unadjusted market data, evidence of negative characteristics, and the testimony of appellant's realtor.

[3] Appellant's realtor, Josephine Chapman, testified to the market. She submitted several real estate listings, all unadjusted. As evidence of negative characteristics, appellant provided a narrative document showing "conservative cost estimates for what we feel are necessary home repairs/improvements to bring our house up to the standards of other houses in the neighborhood." The sum of the estimates is $197,800. No appraisals were submitted. The BOR ultimately reduced the value to $467,300 using a square footage rate of $116.93 per square foot. The BOR reached its square footage rate using eight sales, which average approximately $116 per square foot.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7).

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, no party asks us to adopt the 1999 sale price, and we find no evidence that price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra.

[6] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile data. An appraiser adjusts for the differences between the comparables and the subject. An appraiser may also use other recognized methods of valuation such as the cost and income capitalization approaches. See *Gallick*, supra.

[7] Here, appellant did not have the subject appraised. Instead, as noted above, appellant relied on market data, evidence of negative characteristics, and testimony of a realtor. Raw market data alone is not generally a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). We do not find the appellant's unadjusted sales data to be probative evidence of value in this case. We likewise do not find the testimony of appellant's realtor to be competent evidence of value. A realtor is not an appraiser. See *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported. As we have noted before, "real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience." Id. (quoting The Appraisal of Real Estate (13th Ed.2008)). We have also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. We also note the BOR factually found some of the data submitted by the realtor did not match data in the parcel cards.

[8] We also reject appellant's evidence of negative characteristics, including the repair estimates. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick* at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those

defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-485, ¶7). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on the evidence of the subject's negative characteristics to adjust the subject's value. Having rejected all of appellant's evidence, we find appellant has failed to carry his burden.

[9] We are also required to review the BOR's reduction independently. *Taliki*, supra. Here, the BOR reduced the value based on a number of sales. We note the BOR controlled for a significant number of variables such as the presence of a basement, square footage, heating, cooling, and the presence of a garage. The BOR also controlled for location, sales date, and lot size. Having reviewed the record independently, we find the record supports the BOR's reduction.

For tax year 2017, we order the subject valued as follows:

PARCEL NUMBER 734-12-020

TRUE VALUE

$467,300

ASSESSED VALUE

$163,560

OHIO BOARD OF TAX APPEALS

GARY L. PENCE, (et. al.),

Appellant(s),

vs.

GREENE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-980, 2018-981

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PENCE FAMILY LIMITED PARTNERSHIP
3910 E. ENON RD.
YELLOW SPRINGS, OH 45387

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

Entered Monday, April 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals decisions of the board of revision ("BOR"), which valued the subject properties, parcels A02000200130013100, A02000200130013200, A02000200130014500, A02000200140003900, A02000200140004000, and A02000200180001400, for tax year 2017. We proceed to consider this matter based upon the notices of appeal, the statutory transcripts certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject properties, vacant lots, were initially assessed $6,320 for parcel A02000200130013100, $6,320 for parcel A02000200130013200, $6,320 for parcel A02000200130014500, $3,570 for parcel A02000200140003900, $3,570 for parcel A02000200140004000, and $7,580 for parcel A02000200180001400. The property owner filed complaints with the BOR, which requested the subject properties' values be reduced. The property owner appeared at the BOR hearing to submit evidence in support of the complaints. Gary Pence testified on behalf of the property owner and argued that comparable sales data demonstrated that the subject properties had been overvalued. The BOR voted to reduce the subject properties' values; however, not to the extent requested. These appeals ensued. At this board's hearing, Pence appeared again on behalf of the property owner to supplement the record with additional evidence. He testified that the property owner's opinion of value was based upon an average price per acre based upon comparable sales data.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397.

This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

In this matter, the property owner primarily relied upon unadjusted comparable sales data. We have repeatedly held that information of this type is an insufficient basis to determine real property value because it fails to adequately consider and account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. Here, there was no attempt to adjust the properties to account for any differences among the properties or to make the sales, which occurred over a number of years from 2015 through 2018, relevant to the tax lien date of January 1, 2017. See, generally, The Appraisal of Real Estate (13th Ed.2008). See, also *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."); *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative). Furthermore, Pence acknowledged that he lacked firsthand knowledge of unadjusted comparable sales, and as such, his testimony about them amounts to unreliable hearsay. *Worthington City Schools*, supra, at ¶19 ("the owner qualifies primarily as a fact witness giving information about his or her own property; usually the owner may not testify about comparable properties, because that testimony would be hearsay. See *Raymond v. Raymond*, 10th Dist. Franklin No. 11AP-363, 2011-Ohio-6173, ¶¶19-20.").

Based upon the foregoing, we find that the property owner failed to satisfy its burden before the BOR and before this board.

We now turn to the BOR's decisions, which partially reduced the subject properties' values. The BOR included a memorandum in the statutory transcript (dated after this appeal was filed) which stated that the BOR's decisions were based upon comparable sales, with an indicated price range between $2,000 and $8,000, within the same neighborhood over a three-year period. It should be noted that the record is devoid of any specific explanation for the BOR's decisions, i.e., how and why it valued the subject properties as it did particularly when the subject properties' initially assessed values fell with that $2,000 and $8,000 price range indicated by the comparable sales. Though the property owner submitted a document purported to be the comparable sales upon which the BOR relied, such document suffers from the same deficiencies as the property owner's comparable sales, i.e., failed to account for differences between properties and to market conditions on the tax lien date. As a result, we are unable to replicate the BOR's analysis and, therefore, cannot the affirm BOR decisions. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude that the property owner failed to provide competent and probative evidence of the subject property's value. Furthermore, because we are unable to replicate the BOR's decisions, or to fully determine the basis for its decisions, we are forced to conclude that the BOR's decisions are unsupported. As such, we must reinstate the auditor's initially assessed values. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 35.

Here, the BTA assigned a value that *** could be achieved only through artifice." (Parallel citation omitted.)).

It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER A02000200130013100

TRUE VALUE: $6,320

TAXABLE VALUE: $2,210

PARCEL NUMBER A02000200130013200

TRUE VALUE: $6,320

TAXABLE VALUE: $2,210

PARCEL NUMBER A02000200130014500

TRUE VALUE: $6,320

TAXABLE VALUE: $2,210

PARCEL NUMBER A02000200140003900

TRUE VALUE: $3,570

TAXABLE VALUE: $1,250

PARCEL NUMBER A02000200140004000

TRUE VALUE: $3,570

TAXABLE VALUE: $1,250

PARCEL NUMBER A02000200180001400

TRUE VALUE: $7,580

TAXABLE VALUE: $2,650

OHIO BOARD OF TAX APPEALS

KATHRYN A. MONNIN, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1995

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KATHRYN A. MONNIN
7908 CHETENHAM DRIVE
WESTERVILLE, OH 43081

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Tuesday, April 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owners Kathryn and Daniel Monnin appeal from a decision of the Franklin County Board of Revision ("BOR") denying an application for real property tax penalty remission. We consider the matter upon the notice of appeal and the statutory transcript ("S.T.") filed by the auditor . No party filed additional written argument, and no party requested a hearing.

[2] Remission of late payment penalties is governed by R.C. 5715.39. That statute requires penalty remission for the following reasons:

> (1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.
>
> (3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

(4) The taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(5) With respect to the first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer.

[3] Remission is mandatory if a taxpayer qualifies under R.C. 5715.39(B). *Holmes v. Testa* (Feb. 27, 2018), BTA No. 2017-400, unreported. The BOR must also remit penalties if a "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

[4] Appellants applied for remission under R.C. 5715.39(B)(5), i.e., failure to pay timely after satisfying a mortgage. Appellants' mortgage company timely paid 2016 taxes during the 2017 calendar year. Appellants satisfied the mortgage in August 2017, but no party told the auditor to send future bills to appellants directly. Appellants obtained the bills and paid both on July 23, 2018.

[5] It appears the BOR granted penalty remission for the first half of 2017 on the basis "the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer." See R.C. 5715.39(B)(5). However, the BOR denied penalty remission for the second half 2017 because a party can only obtain remission under R.C. 5715.39(B)(5) for the "first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property." Here, appellants satisfied the mortgage in August 2017; so, remission is only available for the next tax bill, i.e., the first half of tax year 2017. While we are sympathetic, this board is duty-bound to apply a statute as written. This board lacks authority to "add to, enlarge, supply, expand, extend, or improve the provisions of [a] statute to meet a situation not provided for." *John W. Covert Chapter #47 DAV v. Testa* (Sept. 19, 2016), BTA No. 2015-2299, unreported.

[6] While appellants did not apply under R.C. 5715.39(B)(2) or (C), we are unable to find penalty remission is required under those subsections. R.C. 5715.39(B)(2) grants remission when no bill is received and an owner obtains a bill within 30 days after the bill is due. Here, the second half of 2017 was due on June 20, 2018, but appellants did not seek and obtain the bill until July 23, 2018, which is more than thirty days after payment was due. We likewise cannot find R.C. 5715.39(C) applies because "a taxpayer's habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late filing occurred." *Kozmon v. Cuyahoga Cty. Bd. of Revision* (Dec. 21, 2018), BTA No. 2018-868, unreported; *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported.

[7] Accordingly, the decision of the BOR is affirmed.

OHIO BOARD OF TAX APPEALS

PETRICK BUILDERS LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1869, 2018-1870, 2018-1871

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRICK BUILDERS LLC
Represented by:
JACK PETRICK
OWNER
18519 MARTINS LN
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, April 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

In these consolidated cases, property owner Petrick Builders LLC appeals from three decisions of the Cuyahoga County Board of Revision ("BOR"). The county appellees move to dismiss these cases on the basis the notices of appeal were not timely filed with the BOR. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). Accordingly, this matter is decided upon the motion, the statutory transcript certified by the fiscal officer, and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the BOR within thirty days after notice of the decision of the BOR is mailed. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals.***R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal."

The record does not demonstrate that appellant filed such notices with the BOR. We also note the notices of appeal were filed with this board thirty-one days after the BOR mailed its decisions. Having reviewed the record, we conclude this board lacks jurisdiction to hear these appeals. Accordingly, these appeals are dismissed.

OHIO BOARD OF TAX APPEALS

HOWARD SULLIVAN, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-947 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HOWARD SULLIVAN
Represented by:
HOWARD A. AND LINDA D. SULLIVAN
OWNER
612 SPRINGFIELD PIKE
CINCINNATI , OH 45215

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, May 1, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 592-0007-0258, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property was initially assessed at $693,630. The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value. At the BOR hearing on the matter, he appeared with his wife and co-owner to submit argument and evidence in support of the complaint. As the hearing commenced, one of the BOR members noted that the county auditor's office would be recommending that the subject property be revalued at $825,000 and that the property owner had the option to withdraw his complaint. The property owner opted to maintain the complaint and proceed with the hearing. He testified as to the subject property's tax valuation history and argued its defects, i.e., the disrepair of the roof and certain exterior areas of the home, the home's lack of air conditioning, and its location, necessitated a reduction to the subject property's value. When asked if he had estimates to make necessary repairs, the property owner stated that he did not. Susan Spoon, an appraiser in the county auditor's office, also testified. She detailed the property owner's unsuccessful attempts to sell the subject property for $915,000 and $825,000 for long periods of time. Because the subject property's $825,000 list price expired approximately two months before the tax lien date, Spoon recommended that it be revalued at

$825,000. One of the BOR members noted that the property owner provided negative characteristics of the subject property but had failed to provide information to demonstrate that it should be revalued at a specific value. In a 2-1 decision, the BOR voted to retain the subject property's initially assessed value and subsequently issued a written decision to that effect. This appeal ensued.

[3] At this board's hearing, the property owner and his wife, and co-owner, expanded upon the prior testimony about the condition of the subject property and submitted written argument, photographs, and a solicitation for a reverse mortgage from the company AAG.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. However, "case law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn.. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[5] In this matter, the property owner primarily argued that defects of the subject property and his unsuccessful attempts to sell it demonstrate that the auditor and BOR had overvalued the subject property. For two primary reasons, based upon our review of the record and relevant law, we find that the property owner has failed to satisfy his evidentiary burden.

[6] First, the property owner failed to quantify how much the defects, i.e., the disrepair of the roof and certain exterior areas of the home, the home's lack of air conditioning, and its location, negatively impacted the subject property's value. For example, is the subject property's value diminished by $1,000 or $10,000 as the result of the home's lack of air conditioning? In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev*., 75 Ohio St.3d 227, 228, *** (1996) (stating '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.) *Gides*, supra, at ¶7. Similarly, we find the property owner's estimated costs to fix the listed defects to be unpersuasive. We have repeatedly held that dollar-for-dollar costs do not necessarily correlate to value. See also *Throckmorton*, supra; *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). For example, there is no indication that paying $32,000 to install central air in the home would result in a $32,000 increase in the subject property's value.

[7] Second, we have repeatedly held that unsuccessful attempts to sell a property are not good indicators of value. See, e.g.,*Fletcher, Trustee v. Montgomery Cty. Bd. of Revision* (Sept. 14, 2018), BTA No. 2017-1536, unreported. The property owner failed to fully explain and document just how his unsuccessful attempts to sell the subject property at $825,000 demonstrated that the subject property should be revalued at $600,000. In *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶15, the Supreme Court determined that a property owner had failed to prove that his property should be revalued at $40,000 based upon his testimony that he received no offers when he unsuccessfully attempted to sell his property for approximately $70,000. In essence, the court noted that it was not enough to demonstrate that the property may not have been worth the asking price but that a property owner must provide evidence of a *specific* value. Here, the property owner failed to link the $825,000 asking price with his opinion that the subject should specifically be valued at $600,000. Although we acknowledge that a property owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987), in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem.*

Co., 65 Ohio St.3d 621 (1992). Accord *Schutz*.

[8] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we must conclude that the property owner failed to satisfy his burden to submit competent, credible, and probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

TRUE VALUE

$693,630

TAXABLE VALUE

$242,770

OHIO BOARD OF TAX APPEALS

AMERICAN ACQUISITIONS CORP, (et. al.),

Appellant(s),

vs.

HANCOCK COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-524

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AMERICAN ACQUISITIONS CORP
Represented by:
TIMOTHY RUNION
PRESIDENT
600 TIFFIN AVE
FINDLAY, OH 45840

For the Appellee(s) - HANCOCK COUNTY BOARD OF REVISION
Represented by:
PHILLIP A. RIEGLE
PROSECUTING ATTORNEY
HANCOCK COUNTY
514 S. MAIN ST.
FINDLAY, OH 45840

FINDLAY CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, May 1, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] American Acquisitions Corporation appeals from a decision of the Hancock County Board of Revision ("BOR") related to tax year 2017. We sanctioned appellant by barring it from presenting new evidence because it failed to comply with this board's discovery rules. The appellee school board and the BOR were represented at this board's hearing. We now decide the case on the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, this board's hearing record ("H.R."), and school board's exhibit A.

[2] This case began as a challenge to four parcels. For reasons explained below, only three of those parcels are before this board. The four parcels are lots improved with several office buildings. The auditor valued the four parcels at a combined $426,410 for tax year 2017. S.T., Ex. G. Appellant purchased the four parcels on January 26, 2017 for $640,000. S.T., Ex. F. The conveyance fee statement shows no portion of the

consideration paid was for non-realty. The school board filed an increase complaint asking the BOR to adopt the sale price of $640,000 as the value of the four parcels.

[3] The BOR held a hearing, and appellant was represented by its president who presented an affidavit signed by the seller. The president argued $125,000 of the sale price was attributable to business equipment; $85,000 of the sale price was attributable to the purchase of seller's business; approximately $160,000 in repairs were needed; and the parcels were valued at or above comparable properties in the area. In support, the owner presented the affidavit of the seller to support his argument on the purchase of the seller's business and the sale of personal property. However, the seller did not testify. The president also testified there was no contract allocating the sale between realty and non-realty. The president did not submit an appraisal.

[4] The BOR accepted the sale price but did grant a partial reduction based on appellant's argument that $85,000 was attributable to the purchase of the seller's business. The BOR accordingly increased the value to a value of $555,150. See S.T., Ex. G. Appellant filed a notice of appeal with this board, which appears to reaffirm appellant's argument that a portion of the sale price was attributable to personal property. However, appellant only appealed three of the four parcels. Again, we barred appellant from presenting new evidence because it did not comply with this board's discovery rules. Appellant also failed to file written argument in support of its position.

[5] The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Columbus City. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7.

[6] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. A party may rebut the presumption of recency by showing the character of a property has changed during the period between the tax-lien date and the sale date. Id. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989).

[7] The Ohio Supreme Court has explained that a taxpayer asking a BOR to adopt a sale price can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with purchase documents. Corroborating testimony is unnecessary. Id. at ¶ 14. Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id. Here, the appellee school board presented evidence of a facially valid sale, which shifts the burden of rebuttal to any opposing party.

[8] Appellant does not argue the sale was not arm's-length. Instead, it argues a portion of the sale price was attributable to non-realty. The Ohio Supreme Court has been clear that the party advocating for a reduction below the full sale price due to an allocation to other assets bears the burden of showing the propriety of such action and must provide "corroborating indicia" of the appropriate allocation. *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property['s] value." *Cincinnati School Dist. Bd.*

of Edn. v. Hamilton Cty. Bd. of Revision, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶ 11. The Supreme Court has also held, in some instances, an appraisal can be used to show the value attributable to realty versus non-realty. Id.

[9] Here, we find appellant has not carried its burden of proving what portion of the sale price, if any, was attributable to non-realty. Appellant primarily relies on the affidavit of the seller to prove the allocation. The seller did not testify at a hearing before the BOR or this board. We have held, in at least one case, that allocation cannot be proven through a general affidavit of a person not made available to testify. See *Emerick Manor Gomes, LLC v. Cuyahoga Cty. Bd. of Revision* (May 1, 2012), BTA No. 2009-K-769, unreported. In *Emerick Manor*, we disregarded a similar affidavit stating, "[w]e generally regard affidavits of the type herein submitted, as simply voluntary, ex parte declarations, primarily self-serving in nature, and while submitted under oath, made without notice to the adverse party, and, since the affiant never appears, there is no opportunity for cross-examination. Naturally, these characteristics substantially reduce the weight accorded thereto, rendering such material of little probative value." Id. (quoting *Raskin v. Limbach* (Feb. 2, 1988), BTA No. 1986-F-28, unreported). We also find the affidavit and the testimony of appellant's president lack "corroborating indicia" of reliability because no other documents were submitted. Appellant's president agreed there was no such contractual allocation.

[10] Concerning the personal property, appellant failed to provide even an itemized list of the personal property transferred. It relies solely on the ex-post affidavit, which was executed sixteen months after the sale and, presumably, to combat the school board's valuation complaint. Even if we assumed the affidavit was sufficient, "the mere fact that the parties to a bulk sale of assets have agreed to allocate a particular amount to real estate does not by itself establish the propriety of the allocation." *Cincinnati School Dist.*, supra.

[11] Even assuming the business value allegedly transferred is legally severable from the sale price under Ohio tax law, we likewise find the appellant did not show what portion, if any, was allocable to the purchase of seller's business. Accordingly, we find the BOR wrongly reduced the value based on the sale of a business. Again, this board does not presume the BOR's value is correct. *Columbus City Schools Bd. of Edn.*, supra. Here, there is no substantive evidence of the business' value, e.g., financial statements, an appraisal valuing the business. See *Arbors East*, supra. We are also unable to extrapolate a value because appellant failed to submit an appraisal of the real property. See id. at ¶ 5 (appraisal extrapolating business value after valuing real property and personal property).

[12] The school board argues the entire purchase price should be adopted because appellant failed to rebut the presumption created by the sale. We agree the purchase price is the correct value. However, as discussed at this board's hearing, appellant only appealed three of the four parcels. Accordingly, while we order the properties valued in accordance with the sale price, we can only increase three of the four by each's proportionate share. See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2005-Ohio-1921.

[13] The auditor valued each of the four parcels as follows:

$98,250 (59-0000268730)

$175,300 (59-0000268720)

$141,380 (59-0000268710)

$11,480 (59-0000268700)

[14] Per *FirstCal*, allocating the sale between the partials proportionately renders values as follows:

$147,460 (59-0000268730)

$263,110 (59-0000268720)

$212,200 (59-0000268710)

$17,230 (59-0000268700)

[15] Since this board lacks jurisdiction to consider parcel 59-0000268700 because no party appealed that parcel, we order the remaining three parcels be valued, as of January 1, 2017, as follows:

PARCEL NUMBER 59-

0000268730 TRUE VALUE

$147,460

TAXABLE VALUE

$51,610

PARCEL NUMBER 59-

0000268720 TRUE VALUE

$263,110

TAXABLE VALUE

$92,090

PARCEL NUMBER 59-

0000268710 TRUE VALUE

$212,200

TAXABLE VALUE

$74,270

OHIO BOARD OF TAX APPEALS

MIAMISBURG CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1646
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - MIAMISBURG CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MITCHELL L. STITH
SCOTT SCRIVEN LLP
250 EAST BROAD STREET
SUITE 900
COLUMBUS, OH 43215

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

CHRISTOPHER & MELISSA RAUCH
809 PLUM STREET
MIAMISBURG, OH 45342

Entered Thursday, May 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is before the Board of Tax Appeals upon the filing of a motion to remand with instructions to dismiss the underlying complaint for lack of jurisdiction, filed by the appellant board of education ("BOE"). By way of the motion, the BOE alleges that the complaint was filed by a person unauthorized to file a complaint on behalf of the property owners. Neither the complainant, property owners, nor county appellees responded to the motion. Based upon the record before us, the motion to remand is granted.

[2] A review of the statutory transcript demonstrates the following. A complaint was filed with the BOR, which requested that the value of parcel K46 00104 0012 be reduced for tax year 2017. The complaint identified Christopher and Melissa Rauch as the owners. Line 2 requested the identity of the complainant, if not the property owner(s); no response was provided. "Dawn Hoosier" was identified as the property owners' agent, on line 3 of the complaint, but the nature of Hoosier's relationship to the subject property

(or the property owners) was not identified on line 5 of the complaint. The BOR assigned the complaint as BOR #2117. The BOE filed a countercomplaint, which objected to the request.

[3] The BOR held a consolidated hearing on this matter, as well as other complaints, which are not the subject of this appeal (BOR #2435 and BOR #2119). As the hearing commenced, Hoosier entered her appearance as a representative of Tax Ease Ohio, made a presentation in favor of the complaint, and examined a witness, Jeanne McAvoy, in support of the complaint. Counsel for the BOE cross-examined Hoosier to clarify her relationship to the subject property and/or property owners. Hoosier conceded that she was not a property owner and that she filed the complaint as an agent to Tax Ease Ohio, holder of a lien encumbering the subject property. She admitted that she was not an attorney and that an administrative assistant prepared the complaint. Consequently, counsel for the BOE argued that the BOR lacked jurisdiction to consider the complaint because a lienholder was not authorized to file a complaint on behalf of a property owner and, therefore, the matter should be dismissed, and the subject property's initial value should be retained. BOR member Linda Martin "duly noted" the jurisdictional objection and proceeded to the next hearing. At the BOR decision hearing, Martin provided a rendition of the relevant facts, noting that Hoosier appeared on behalf of Tax Ease and referred to the subject property as "a Tax Ease property." Although she also noted the BOE's jurisdictional objection, no one on the BOR explicitly decided to sustain or to overrule it. The BOR subsequently voted to reduce the subject property's value to $55,150; a written decision to that effect was issued. This appeal ensued.

[4] As noted above, the BOE filed this motion to remand with instructions to dismiss the complaint because Hoosier committed the unauthorized practice of law by filing the complaint on behalf of the property owners. The BOE asserted that, as a result of Hoosier's action, the BOR lacked jurisdiction to consider the complaint and that the BOR committed legal error when it issued its value decision.

[5] The court recently affirmed in *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244, ¶18, "the preparation and filing of a valuation complaint has been held to constitute the practice of law, *Sharon Village* [*v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479, 483 (1997)], and therefore, one must be authorized to engage in that activity." R.C. 5715.19(A) provides an exhaustive list of persons authorized to file complaints on behalf of others. "[N]onlawyers who are not specified by R.C. 5715.19(A) are not authorized to file on behalf of a property owner." *Greenway*, supra, at ¶19. A complaint filed by a person unauthorized to file such complaint fails to invoke a board of revision's jurisdiction. Id.

[6] In this matter, it is undisputed that the property owners did not file the complaint. Because Hoosier conceded that she was not an attorney (and presumably neither was the administrative person who completed the complaint for her), we conclude that no attorney was involved in the filing the complaint on behalf of the property owners. Hoosier testified that she acted on behalf of the holder of a lien against the subject property, Tax Ease Ohio. However, "lienholders" are not specified in the list of persons authorized to file complaints under R.C. 5715.19(A). As such, we find that Hoosier engaged in the unauthorized practice of law by filing the complaint in this matter and that, in doing so, the complaint did not invoke the BOR's jurisdiction.

[7] Not only did Hoosier engage in the unauthorized practice of law by filing the complaint, she engaged in such activity at the BOR hearing when she examined McAvoy about the data and methodologies used to derive her conclusion of the subject property's value. In *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439, ¶18, the court concluded that a non-attorney engaged in the unauthorized practice of law by questioning a witness. In doing so, the court stated that "'[l]itigation must be projected * * * according to established practice by lawyers who are of high character, skilled in the profession, dedicated to the interest of their clients, and in the spirit of public service.' *Union Sav. Assn.* [*v. Home Owners Aid, Inc.*, 23 Ohio St.2d 60, 64 (1970)]. Concomitantly, 'limiting the practice of law to licensed attorneys is generally necessary to protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.' *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, ***, ¶ 40." (Parallel citation omitted.) Id. at ¶29.

[8] Based upon the forgoing, the BOE's motion to remand is granted. This matter is remanded to the BOR with instructions to vacate its decision over the complaint and countercomplaint in BOR #2117.

OHIO BOARD OF TAX APPEALS

ECC-CENTER, LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1977 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ECC-CENTER, LLC
Represented by:
THOMAS C. KILCOYNE
CORS & BASSETT, LLC
201 E. 5TH STREET, SUITE 900
CINCINNATI, OH 45202

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, May 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant, a limited liability company, appeals from five decisions of the Hamilton County Board of Revision ("BOR"). Appellant did not request a hearing with this board. We now decide the case on the notice of appeal, the transcript certified by the auditor ("S.T."), and appellant's written argument.

[2] Appellant purchased the five subject properties, and several other related properties, in 2013 to redevelop, and no party disputes the properties were in significant disrepair. To facilitate the redevelopment, the city of Cincinnati designated the subject properties as a community reinvestment area or CRA. The CRA program is a tax incentive program "that promotes the construction and remodeling of commercial, industrial, and residential structures" within the CRA's geographic area. *State ex. rel. City of Lorain v. Stewart*, 119 Ohio St.3d 222, 2008-Ohio-4062. New or remodeled property "located within the CRA is eligible for a partial or total tax exemption." While an owner will still pay real property taxes on the land and preexisting improvements, new improvements will be exempt, or, as the parties characterize it, abated. R.C. 3735.66-67 prescribes the process for creating a CRA. First, either a municipality or a county must adopt a resolution "describing the boundaries" of the CRA and stating what property will be exempted. R.C. 3735.66. Consent from the board of education must be obtained in certain circumstances. See R.C. 3735.671.

[3] After, the property owner submits an exemption application with a "housing officer" who "shall verify the

construction of the new structure or the cost of the remodeling of the existing structure." R.C. 3735.67(A). The housing officer also reviews applications for non-residential properties such as the subject properties. See R.C. 3735.67(A). The housing officer must "determine whether the construction or remodeling meets the requirements for an exemption" under the CRA statutes. R.C. 3735.67(B). If the housing officer determines the "requirements for exemption are met," the officer "shall forward the application to the county auditor with *** the period and percentage of the exemption" granted by the municipality or county. R.C. 3735.67. The Ohio Supreme Court has held the auditor is required, at least initially, to place the property on the exempt list. See *Stewart*, supra, at ¶ 45 ("The auditor is not empowered to refuse to perform his ministerial statutory duty of placing on the exempt list the properties certified by the housing officer as meeting the CRA-exemption requirements based on a belief that the properties are not exempt"); but see R.C. 3735.67(E) (specified persons, boards, or officers, may file a complaint against continued exemption, which is filed with the housing officer).

[4] Importantly for this case, a party aggrieved under the CRA program has an administrative appeal right to the community reinvestment area housing council. R.C. 3735.70. When a CRA is located within a municipality, that council consists of two members appointed "by the mayor of the municipal corporation," two members appointed by the city council, and "one member appointed by the planning commission of the" municipality. R.C. 3735.69. Appeals from that council may be taken "to the court of common pleas of the county where the area is located." Id.; see also *Stewart*, supra, at ¶ 46-51 (declaratory judgment and mandamus potentially available).

[5] Returning to the facts of this case, after the city council adopted the resolution creating the CRA, appellant and the city executed an "exemption agreement." Section 2 recites the process contained in R.C. 3735.67. It reads.

> "Real Property Tax Exemption. Subject to the satisfaction of the conditions set forth in this Agreement, the City approves exemption from real property taxation, pursuant to and to the fullest extent authorized by the Statute, of one hundred percent (100%) of the amount by which the Improvements increase the assessed value of the Property as determined by the Hamilton County Auditor, for a period of ten (10) years, provided that the Company shall have entered into the Board of Education Agreement. After completion of the Project, the Company must file the appropriate application for tax exemption with the City's Housing Officer for the City of Cincinnati, the Director of the City's Department of Trade and Development (the "Housing Officer"), to effect the exemption authorized by this Agreement. The Company is solely responsible to take this action. In accordance with Ohio Revised Code Section 3735.67, the exemption is conditioned on verification by the Housing Officer of (A) the completion of remodeling, (B) the cost of remodeling, (C) the facts asserted in the application for exemption and (D) if a remodeled structure is a structure of historical or architectural significance as designated by the City, state or federal government, that the appropriateness of the remodeling has been certified in writing by the appropriate agency. If the required verification is made, the Housing Officer will forward the exemption application to the Hamilton County Auditor with the necessary certification by the Housing Officer. Subject to the conditions set forth in this Agreement, the exemption commences the first tax year for which the Improvements would first be taxable were the Improvements not exempted from taxation. The dates provided in this paragraph refer to tax years in which the subject property is assessed, as opposed to years in which taxes are billed. No exemption shall commence after January 1, 2015, nor extend beyond the earlier of (i) December 31, 2024 or (ii) the end of the tenth (10) year of exemption."

[6] For reasons explained below, it appears the exemption agreement was never fully implemented because the auditor was never notified by the housing officer of the exemption. Appellant did, however, improve the properties. For example, one property was improved with office space, community squash courts, and

classrooms used for community improvement activities. The parcel cards show significant improvements were completed as early as 2014.

[7] 2017 was a reappraisal year for Hamilton County. Accordingly, the auditor reappraised the subject properties in accordance with R.C. 319.28. He reappraised the properties at values higher for tax year 2017 than the previous triennial period. Appellant filed a BOR complaint citing the CRA exemption. Appellant argued the subject parcels should be valued in accordance with the 2013 sale price because any increase in value would be offset by the exemption.

[8] The CRA was the central issue at the BOR hearing. Both the auditor's BOR designee and the auditor's representative argued the BOR lacked jurisdiction to consider CRA exemption issues. More importantly, the auditor's representative argued, no CRA exemption had ever been filed by the housing officer. There also appears to have been some miscommunication below. The auditor's representative informed appellant that it would need to take the issue up with the housing officer, but appellant's representative stated the housing officer sent appellant to the auditor to resolve the issue. Regardless, it does not appear the housing officer ever certified the exemption to the auditor. The required certification, if one exists, is not contained in the record.

[9] There is a reference to a CRA on one of the five parcel cards; however, it is unclear if that note refers to an exemption, city council's ordinance, or some other CRA issue. We also note one of the parcel cards references a tax increment financing exemption but not a CRA exemption. Regardless, the BOR's speaking member explained to the appellant that the BOR only had authority to determine true value as of January 1, 2017, and the BOR ultimately upheld the auditor's values. Appellant filed a notice of appeal with this board but did not request a hearing.

[10] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1,2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[11] Both this board and the BOR are creatures of statute with limited jurisdiction. In other words, "any right to review must be found in the [enabling] statutes." *Netherland v. Levin* (Dec. 14, 2007), BTA No. 2007-T-934, unreported. We begin by addressing the BOR's jurisdiction. R.C. 5715.19(A)(1)(d) permits an eligible party to file a BOR complaint for one of six enumerated reasons, e.g., change in classification, recoupment charges, and valuation determinations. While the Supreme Court's decision in *Stewart*, supra, originated in mandamus not an appeal from this board, we find *Stewart* quite instructive. In that case, the housing officer certified the CRA exemption to the auditor per R.C. 3735.67, but the auditor refused to place the property on the exempt list. The housing officer filed for a writ of mandamus compelling the auditor to place the properties on the exempt list. The auditor argued the writ should be denied because there was an adequate remedy at law, e.g., a BOR appeal. Id. at ¶¶ 46, 57-58. The court rejected that argument. We read the *Stewart* decision to hold a BOR lacks authority to decide pure CRA exemption questions because that authority lies with the housing officer, not the auditor or the BOR. Id. at ¶¶ 38-45, 57-58. An appeal from the housing officer is taken to the community reinvestment area housing council and then to common pleas court. R.C. 3735.70. As is clear from *Stewart*, writ relief and declaratory judgment relief might also be available. *Stewart*, supra, at ¶¶ 48-53 (declaratory judgment relief); ¶¶ 43-45 (writ relief). Accordingly, we find the BOR was correct that it lacked authority to decide an appeal on the CRA exemption, or, in this case, lack thereof. Therefore, this board lacks jurisdiction to consider the CRA question because our jurisdiction derives from the BOR's jursidiction. Our holding in this case is consistentwith *Netherlands*, supra, where a party asked this board to grant a CRA exemption vis-à-vis R.C. 5717.02, which permits exemption appeals from the Tax Commissioner. We held we lacked authority, and it appears the subject

property in that case was likely one at issue in *Stewart* showing we correctly interpreted the governing statutes.

[12] As shown above, our review is limited to questions of valuation, which is still a relevant issue for CRA properties because the CRA program only grants a partial exemption, i.e., an exemption on new improvements. See *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Aug. 10, 2001), BTA No. 2000-E-792, unreported; *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Jan. 12, 2010), BTA No. 2007-V-60, unreported. We limit our review to the issue of valuation.

[13] The tax year at issue is 2017, which, again, was a reappraisal year for Hamilton County. Having reviewed the record, we find appellant has not carried its burden of proving the adjustment in value requested. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, we presume the 2014 sale is not recent because it was purchased more than two years before the tax-lien date. The evidence is the property has been significantly improved since the subject was purchased. Indeed, the city created the CRA under the auspices significant property redeveloped. Accordingly, we do not find the sale price is competent evidence of value as of January 1, 2017.

[14] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile data. An appraiser adjusts for the differences between the comparables and the subject. An appraiser may also use other recognized methods of valuation such as the cost and income capitalization approach. See *Gallick*, supra. Here, although appellant submitted income and expense reports in support of its value, it failed to provide any evidence of market data to allow this board to conduct our own income approach. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996); The Appraisal of Real Estate (14th Ed.2013). Having disposed of appellant's only evidence, we affirm the decision of the BOR and find the true and taxable values of the subject parcels as of January 1, 2016, were as follows:

PARCEL NUMBER 081-0004-0151-90

TRUE VALUE

$1,239,130

TAXABLE VALUE

$433,700

PARCEL NUMBER 081-0004-0163-00

TRUE VALUE

$127,710

TAXABLE VALUE

$44,700

PARCEL NUMBER 081-0004-0164-90

TRUE VALUE

$59,860

TAXABLE VALUE

$20,950

PARCEL NUMBER 081-0004-0165-90

TRUE VALUE

$155,130

TAXABLE VALUE

$54,300

PARCEL NUMBER 081-0004-0166-90

TRUE VALUE

$137,860

TAXABLE VALUE

$48,250

OHIO BOARD OF TAX APPEALS

RICHARD & CONNIE BEECHLER, (et. al.),

Appellant(s),

vs.

FAYETTE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-732

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RICHARD & CONNIE BEECHLER
Represented by:
RICHARD E. BEECHLER
OWNER
P.O. BOX 254
WASHINGTON C H, OH 43160

For the Appellee(s) - FAYETTE COUNTY BOARD OF REVISION
Represented by:
JESS C. WEADE
PROSECUTING ATTORNEY
FAYETTE COUNTY
110 E. COURT ST., 1ST FLR
WASHINGTON C.H, OH 43160-1355

MIAMI TRACE LOCAL SCHOOLS BOARD OF EDUCATION BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, May 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Richard and Connie Beechler appeal from a decision of the Fayette County Board of Revision ("BOR") valuing the subject parcel for tax year 2017. We now decide the case on the notice of appeal and the statutory transcript ("S.T.") certified by the auditor.

The subject parcel is a commercial lot improved with at least two buildings. No party disputes the buildings are in significant disrepair, and appellants testified at the BOR hearing that the property is not in leasable condition. Mr. Beechler testified the subject was foreclosed several years ago by mortgage bank. Mr. Beechler testified the owner-bank marketed the subject for at least three years and steadily decreased the listing price from approximately $300,000 to roughly $185,000. Appellants testified they offered the bank, through the realtor, a price of $30,000 with the intent to demolish the buildings and use the land for another

purpose. He testified appellants purchased the subject from the bank in August 2017. However, appellants never supplied any of the purchase documents, e.g., a conveyance fee statement, deed, or purchase agreement. The BOR decreased the value to $80,200, but the record is unclear why the BOR found that value. No appellee filed written argument with this board to explain the reduction.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989).

The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). The Ohio Supreme Court recently discussed the evidentiary standard for presenting a facially valid sale in *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412. The *Dauch* court made clear a proponent can present the sale using a conveyance fee statement, deed, purchase agreement, or a combination thereof, though those "particular documents" are not required in every case. Id. at ¶¶17-18. However, the court was clear that some documentary evidence was required to establish the basic facts of the sale. Id. See also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 13 (discussing required "basic documentation of a sale"). Here, appellant presented no documentary evidence of the sale, e.g., a conveyance fee statement, deed, or purchase agreement. We also note the parcel record card is devoid of any details about the purported sale. Lacking necessary documentation, this board finds appellant has not presented a facially valid sale. Since appellants rely solely on the purported sale, we find they have not carried their burden.

We are also required to review the BOR's reduction independently. *Taliki*, supra. We cannot adopt a BOR's reduced value if this board cannot replicate the value using evidence in the record. *Sapina*, supra.

Here, the BOR reduced the value to $80,200, but this board is unable to determine why the BOR reduced the value to that amount. We must, therefore, reject the reduced value and reinstate the auditor's initial value.

We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER 190-021-0-01-007-00

TRUE VALUE

$134,100

TAXABLE VALUE

$46,940

OHIO BOARD OF TAX APPEALS

JP REALTY GROUP LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-269

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JP REALTY GROUP LLC
Represented by:
JOSEPH PESSAR
OWNER/LANDLORD
JP REALTY GROUP LLC
PO BOX 225
HACKENSACK, NJ 07601

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, May 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was filed late with this board and was not filed at all with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The record also shows that the notice of appeal was filed with this board thirty-two days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ROBERT JUERGENS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-177

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT JUERGENS
529 TREESIDE LANE
AVON LAKE, OH 44012

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, May 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 311-22-030 and 311-22-031, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed a combined true value of $188,000. The board of education ("BOE") filed a complaint, which requested that the subject property be revalued at $258,000, consistent with the price at which it transferred in May 2016. The property owners did not file a countercomplaint. At the hearing before the BOR, the BOE and property owner appeared to submit argument and evidence into the record. The BOE submitted a survivorship deed to demonstrate the $258,000 transfer of the subject property from Archibald Apartments, LLC to Robert Juergens and Jacqueline S. Juergens in May 2016. On cross-examination, Mr. Juergens acknowledged that the subject property had been marketed and inspected prior to the closing of the sale. He also acknowledged that the parties to the subject sale had failed to allocate any portion of the $258,000 sale price to personal property, i.e., household appliances. The BOR

subsequently issued a decision that revalued the subject property at its $258,000 purchase price and the property owner appealed to this board.

By way of its notice of appeal, the property owner requested that this matter be resolved through this board's small claims docket; however, the BOE objected to the request. R.C. 5703.021(B) provides that "[a]n appeal may be filed with the board of tax appeals and assigned to the small claims docket as authorized under division (C) of this section, provided the appeal is ***: (1) Commenced under section 5717.01 of the Revised Code in which the property at issue qualifies for the partial tax exemption described in section 319.302 of the Revised Code." R.C. 319.302(A)(1) provides the following:

> "Real property that is not intended primarily for use in a business activity shall qualify for a partial exemption from real property taxation. For purposes of this partial exemption, 'business activity' includes all uses of real property, except farming; leasing property for farming; occupying or holding property improved with single-family, two-family, or three-family dwellings; leasing property improved with single-family, two-family, or three-family dwellings; or holding vacant land that the county auditor determines will be used for farming or to develop single-family, two family, or three-family dwellings. ***"

It is undisputed that the subject property is "intended primarily for use in a business activity" and was actually used as a four or five unit apartment building. As such, the instant appeal is ineligible for the small claims docket. We therefore reassign this matter to the board's regular docket. R.C. 5703.021(D).

On appeal, none of the parties availed themselves of the opportunity to appear at a hearing before this board. Instead, the property owner submitted written argument that asserted that the value of parcel 311-22-030 should be reduced based upon the price at which a similar property transferred and that the value of parcel 311-22-031 should be reduced based upon the costs to remediate the roof and tree removal and the value of the household appliances.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a property has not been the subject of a recent, arm's-length sale, this board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

We begin our analysis with the May 2016 sale. Upon presentation of documentation of the sale, the BOE created a rebuttable presumption that the $258,000 sale price reflected the subject property's value as of January 1, 2016. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The property owner has not disputed the arm's-length character or recency of the subject sale. Instead, he argued that the $258,000 sale price should be reduced for two main reasons, i.e., the costs to make repairs and the inclusion of the household appliances in the subject sale price.

Upon review, we do not find these arguments persuasive. Ohio courts have pointed out in a number of contexts that dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Throckmorton, v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79

Ohio St.3d 397 (1997). We note that the property owner conceded that the subject property had been inspected prior to the closing of the subject sale. This board has continuously held that the sale of a property will not be disregarded because the buyer arguably paid too much for a property due to a lack of understanding about the property, including, e.g., its condition, its viability, its history. See, e.g., *Bd. of Edn. of the Huber Hts. City Schools v. Montgomery Cty. Bd. of Revision* (Sept. 1, 2006), BTA No. 2004-A-1210, unreported; *Snodgrass v. Franklin Cty. Bd. of Revision* (July 26, 2016), BTA No. 2015-1924, unreported at 3 (the buyer's failure to engage in greater due diligence does not necessitate rejection of the sale of real property). See also *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported at 11 ("A negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal.")

Furthermore, as the proponent of allocating a portion of the sale price to items other than the subject property, the property owner had the burden to demonstrate the propriety of such allocation. See *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 325, 2017-Ohio-8817, at ¶12 ("[T]he case law establishes that an owner's allocation of purchase price to assets other than the real estate can be relied upon by the taxpayer to obtain a reduced value, provided that the record contains corroborating evidence in support of" such allocation.). Here, the property owner has failed to provide any corroborating evidence to support his claimed allocation. The record is notably absent of information regarding the household appliances, specifically their age, brand, and condition, such that we could determine whether the property owner's claimed $14,000 allocation reflects fair market value of such appliances.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the property owner failed to rebut any aspect of the subject sale such that the sale price should be reduced. In doing so, we find that the BOR properly decided to increase the subject property's value to $258,000.

It is therefore the order of this board that the subject property's true and taxable values are as follows as of January 1, 2016:

TRUE VALUE

$258,000

TAXABLE VALUE

$90,300

OHIO BOARD OF TAX APPEALS

TIMOTHY L. RIOUX & LORA GISCHEL, (et. al.),	CASE NO(S). 2019-190
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - TIMOTHY L. RIOUX & LORA GISCHEL
Represented by:
TIMOTHY L. RIOUX AND LORA GISCHEL
OWNER
5747 ALFIE PLACE
COLUMBUS, OH 43213

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision. Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On January 28, 2019, the appellants filed an application for remission with this board. Appellants did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision, stating that there is no record of a decision issued on an application by appellants.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am.*

Restaurant & Lunch Co. v. Glander, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

WEST 8TH - WEST 9TH LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-64 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WEST 8TH - WEST 9TH LLC
Represented by:
ELIAHU ADAHAN
309 S. 4TH STREET 1A
COLUMBUS , OH 43215

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On January 10, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision, testifying that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KELLIE MORRIS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-402

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KELLIE MORRIS
10215 OSTEND AVENUE
CLEVELAND, OH 44108

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARY UTLEY, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-316 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - MARY UTLEY
OWNER
6511 CARRIAGE LN
REYNOLDBURG, OH 43068

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 7, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision, stating that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the

appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

STEVE LOCSEY, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-272 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEVE LOCSEY
OWNER
P.M.B. #114
1255 N. HAMILTON RD
COLUMBUS, OH 43230

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On February 15, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision, stating that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

F. JEFFREY MILLER, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-244

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - F. JEFFREY MILLER
OWNER
9714 RIM ROCK DRIVE
LOOMIS, CA 95650

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On February 11, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision, stating that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the

appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KATHLEEN A. LASTORIA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-222

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KATHLEEN A. LASTORIA
8567 RIVERVIEW ROAD
BRECKSVILLE, OH 44141

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JEANETTE THEVENIN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-175

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEANETTE THEVENIN
OWNER
7331 WALLINGS RD
NORTH ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellant's notice of appeal.

On January 23, 2019, the appellant filed a complaint against the valuation of real property with this board. Appellant did not include a copy of a BOR decision. The record does not show that a decision was issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the

appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ANDREW AND ERIN ROSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-118 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANDREW AND ERIN ROSS
Represented by:
ERIN ROSS
36830 BROADSTONE DRIVE
SOLON, OH 44139

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, May 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have

jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

RACING RVS, LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-387 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RACING RVS, LLC
Represented by:
ROBERT J. FISHER
6933 BROOKVILLE SALEM RD
BROOKVILLE, OH 45309

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Thursday, May 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 26, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the recordkeeper for the Montgomery County Board of Revision, stating that there is no record of a decision issued for appellant's application.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ALAN E. AND BROOKE M GORBACH, HUSBAND AND WIFE, (et. al.),	CASE NO(S). 2019-363
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ALAN E. AND BROOKE M GORBACH, HUSBAND AND WIFE
Represented by:
BROOKE GORBACH
4085 APRIL DRIVE
UNIONTOWN, OH 44685

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Thursday, May 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), the motion, and the responses thereto.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

A review of the statutory transcript certified to this board indicates that the owners did not file a copy of the

notice of appeal with the BOR. The owners contend in response that they emailed a copy of the notice of appeal to the county's assistant prosecuting attorney. As this board has previously noted, "although a county prosecutor acts as counsel for the BOR, the prosecuting attorney is not authorized to accept a notice of appeal in lieu of filing such notice with the BOR." *Kinat v. Lake Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2010-Y-1213, unreported, citing *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621 (1998). The owners' citation to the Rules of Civil Procedure is inapposite, as the requirements for filing an appeal to this board are specifically provided by statute. As the court explained in *Salem Med. Arts*, supra:

> "Filing a copy of the notice of appeal with the board of revision is, however, a different requirement from serving a copy of pleadings upon the board's attorney after litigation has begun at the BTA. R.C. 5715.44 provides that the county prosecutor is to act as counsel for the board of revision in defending any proceedings in any court in which the board of revision is a party. However, neither R.C. 5715.44 nor R.C. 5717.01 authorizes any appealing party to serve, or the prosecuting attorney to accept, a copy of a notice of appeal in lieu of filing with the board of revision." Id. at 623.

Accordingly, filing with the assisting prosecuting attorney in this matter does not meet the owners' obligation to file notice of the appeal with the BOR.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. Accordingly, the county appellees' motion is well taken. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

FRANK COOK SENIOR HOUSING, L.P., (et. al.),	CASE NO(S). 2016-1043
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MUSKINGUM COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - FRANK COOK SENIOR HOUSING, L.P.
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - MUSKINGUM COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, May 13, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 82-31-01-01-001, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, records of this board's hearings, and written argument submitted by the parties.

The subject property, a "three-story building that contains 60 two-bedroom apartment units," was initially valued at $1,502,600. Hearing Record ("H.R.") at 12. The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value. At the hearing before the BOR, the property owner submitted the testimony of Sue White, the subject property's regional manager. White testified as to the subject property's age, construction, income and expenses, occupancy/vacancy rate(s), and participation in the federal government's Low-Income Housing Tax Credit program (more commonly referred to as "LIHTC"). The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

This matter has been the subject of multiple merit hearings. A consolidated merit hearing was held by this board, along with another appeal, BTA No. 2016-1047, on February 22, 2017. In that hearing, the property owner submitted the appraisal report and testimony of Richard G. Racek, Jr., who opined the value of the

subject property to be $1,090,000 as of the tax lien date. Racek was examined, and cross-examined, about

the underlying data and methodologies used in his analysis. The county appellees submitted the appraisal report and testimony of Thomas D. Sprout, who opined the value of the subject property to be $1,465,000 as of the tax lien date. Subsequent to the hearing, the parties submitted written argument to more fully assert their respective positions. While this matter was pending for decision, the property owner requested a new hearing "to present additional evidence to conform with the intervening and binding decision issued by the Supreme Court on May 11, 2017 in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, [151 Ohio St.3d 12,] 2017-Ohio-2734 ('*Network Restorations*')." See Motion To Open The Record And Hold New Hearing at 1. We granted the motion and this matter proceeded to a second consolidated merit hearing on June 26, 2018.

At the second consolidated merit hearing, again along with BTA No. 2016-1047, the property owner and county appellees supplemented the record with additional evidence. In doing so, the property owner submitted the testimony of Steven G. Randles and Racek. Randles testified as to his experience working in the area of affordable housing and working for the general partnership associated with the property owner. According to him, the local housing authority determined that there was a need for affordable senior housing and that the LIHTC program was the best avenue to address such need. Racek testified as to his second appraisal report, performed in conformity with *Network Restorations*, which concluded the subject property's value to be $1,090,000 as of the tax lien date. In addition to testifying about the underlying data and methodologies used to derive his conclusion of value, Racek testified as to the differences and similarities between his two appraisal reports submitted in this matter, i.e., at the two separate merit hearings. The county appellees cross-examined Racek about his analysis.

The county appellees submitted the appraisal report and testimony of Sprout. Sprout testified as to his second appraisal report, which concluded the subject property's value to be $2,705,000 as of the tax lien date. In addition to testifying about the underlying data and methodologies used to derive his conclusion of value, Sprout testified as to the differences and similarities between his two appraisal reports submitted in this matter, i.e., at the two separate merit hearings. The property owner cross-examined Sprout about his analysis.

Subsequent to the hearing, the property owner submitted written argument to more fully assert its position. Later, while this matter was pending for decision, the property owner submitted this board's decision in *Abbey Church Village (TC2) Housing Limited Partnership v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported, as additional authority for its position.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

In this matter, the record does not disclose a recent, arm's-length sale of the subject property; therefore, we proceed to evaluate appraisal reports and testimony from Racek and Sprout, respectively.

In his appraisal report, Racek first determined that the subject property's highest and best use, "as vacant," would be multi-family, affordable housing, and "as improved," was for continued use for multi-family, affordable housing. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of a large amount of economic obsolescence and that the sales comparison approach to valuing real property would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach to valuing real property. In doing so, he relied upon four comparable LIHTC properties to determine a LIHTC monthly rental rate of $505 per month, which he then applied to subject property's 60 units, to conclude total gross

potential income of $363,300. From that number, he deducted 2% for vacancy and credit loss, based upon the subject property's historical performance, and then added $7,500 of additional income from sources other than rent. Next, he concluded to effective gross income of $363,828. From that number, he deducted total expenses of $246,000, to conclude to net operating income of $117,828. He capitalized the net operating income at 10.67% (which included a 1.67% tax additur to account for property taxes) to preliminarily conclude to a value of $1,104,292. He deducted $15,000 to account for appliances in each apartment unit. Based upon this analysis, he finally concluded the subject property's value to be $1,090,000 (rounded) as of January 1, 2015.

In his appraisal report, Sprout first determined that the subject property's highest and best use, "as vacant," would be multi-family, affordable housing through the use of tax credits, and "as improved," was for continued use for multi-family, affordable housing through the use of tax credits. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because potential buyers, specifically investors, would focus on a property's income production and because it would not be financially feasible to build a similar property without the tax credits from the LIHTC program. Therefore, he developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property's features to the features of four sales of conventional market apartment complexes. After adjusting for differences with the subject property, Sprout determined the subject property's value on a per-unit basis and gross-income multiplier basis, which rendered values of $2,700,000 and $2,770,000, respectively, as of January 1, 2015. Under the income approach, he relied upon four conventional, market-rate apartments to determine a conventional market rent of $700 per month, which he then applied to subject property's 60 units, to conclude total gross potential income of $504,000. From that number, he deducted 6% for vacancy and credit loss, based upon a published market survey, and then added $7,500 of additional income from sources other than rent. Next, he concluded to effective gross income of $481,260. From that number, he deducted total expenses of $236,176, to conclude to net operating income of $245,084. He capitalized the net operating income at 8.92% (which included a 1.67% tax additur to account for property taxes) to preliminarily conclude to a value of $2,750,000. In his reconciliation of indicated values, Sprout gave little weight to the sales comparison approach, given the income-producing nature of the subject property, and placed the most weight upon the income approach to value, $2,750,000. He deducted $45,000 to account for appliances in each apartment unit. Based upon this analysis, he finally concluded the subject property's value to be $2,705,000 (rounded) as of January 1, 2015.

We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. This board must weigh the appraisal reports and assess their credibility. *Groveport Madison Local Schools Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286.

We find our decision in *Abbey Church*, supra, to be instructive. There, we summed up the case law regarding the valuation of LIHTC properties as follows:

> "In short, the case law is clear that when determining the value of a property that receives government subsidies, those subsidies should be disregarded to the extent that they provide an affirmative value above 'market.' The case law also establishes that restrictions imposed pursuant to the government's police powers, as is the case with the LIHTC property in the present appeal, must be considered. See, also, R.C. 5713.03 ('The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered *but subject to any effects from the exercise of police powers or from other governmental actions* ***.' (Emphasis added.)." Id. at 5.

See *Network Restorations*, supra; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254.

Based upon our review, we must conclude that Racek's appraisal report and testimony best estimates the subject property's value as of the tax lien date. The primary and most important difference between the appraisers' analyses is their consideration, or lack thereof, of the restrictive covenant that limits the use of the subject property as a low-income apartment complex and its target population to people with low incomes. Racek considered the restrictive covenant and relied upon LIHTC market information (including the subject property's own experience in the LIHTC market) for his analysis. Sprout did not consider the restrictive covenant and relied upon the conventional market apartment market for his analysis. As a result, we find that Sprout's appraisal report did not satisfy the requirement that LIHTC restrictions be considered when valuing real property, for property tax purposes, and, as a result, overvalued the subject property.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that Racek's appraisal report and testimony provides the best evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

TRUE VALUE

$1,090,000

TAXABLE VALUE

$381,500

OHIO BOARD OF TAX APPEALS

JAMES VACCARINA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-2017

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMES VACCARINA
11135 HEATH ROAD
CHESTERLAND, OH 44026

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BEDFORD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
THOMAS A. KONDZER
THE LAW OFFICE OF THOMAS A. KONDZER, LLC
1991 CROCKER ROAD, SUITE 600-712
WESTLAKE, OH 44145

Entered Tuesday, May 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not submit any documents in response to the motion, despite being given time to do so following this board's small claims telephonic hearing. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board within thirty days after notice of the decision of *and the BOR* the BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions,

and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ALEC FISHER, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-329 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ALEC FISHER
OWNER
3177 GOLDEN AVENUE
CINCINNATI, OH 45226

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, May 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, notice of the appeal was filed with the BOR thirty-nine days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this

board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LINDA DE PIERO, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-208 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LINDA DEPIERO
OWNER
2296 AUGUSTINE DR
PARMA, OH 44147

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, May 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

On January 31, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The record reveals that the Cuyahoga County BOR did not issue a decision for the application for remission referenced in this matter.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the

appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARTA FORDOS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-95

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARTA FORDOS
OWNER
3645 GLENBAR DRIVE
FAIRVIEW PARK, OH 44126

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, May 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board and the BOR *within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of the appeal was filed with the this board and with the BOR thirty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction

to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION (MONTGOMERY), (et. al.),	CASE NO(S). 2018-2251
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION (MONTGOMERY)
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

CARRIE BOITEAU
OWNER
2722 TIMBER LANE
DAYTON, OH 45414

FRANK D. NELSON
OWNER
4608 CANYON RD
DAYTON , OH 45414

PROP EQUITY LLC
P.O. BOX 446
LAKE BLUFF, IL 60044

Entered Wednesday, May 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the Board of Education of the Northridge Local Schools' ("BOE") motion

to remand with instructions to dismiss the underlying complaint. Neither the complainant, Dawn Hoosier, nor any of the appellee property owners have responded to the motion. We proceed to decide the matter upon the notice of appeal, the motion, and the statutory transcript certified by the auditor.

The underlying complaint against the tax year 2018 valuation of parcel numbers E21 17208 0058, E21 17304 0154, and E21 17209 0110, was filed on March 31, 2019 by Dawn Hoosier. On the complaint form, Ms. Hoosier identified her relationship to the property as "tax lien holder." At the BOR hearing, Ms. Hoosier indicated she has a relationship, though unidentified, with Tax Ease Ohio, which owned one of the parcels (E21 170208 0058) as of the time of the hearing. She did not indicate her relationship to the other two parcels, owned by Prop Equity LLC (parcel number E21 17304 0154) and Frank Nelson (parcel number E21 17209 0110). When questioned by counsel for the BOE, which filed a countercomplaint, Ms. Hoosier indicated she does not individually own any real property in Montgomery County. The BOE objected to the complaint against the value of parcel number E21 17208 0058 and also indicated the filing constituted the unauthorized practice of law in violation of the Supreme Court's decision in *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997). The BOR ultimately issued decisions finding value for each of the three parcels, and the BOE appealed to this board.

The statutory authority for filing complaints against the valuation of real property was recently explained by the Supreme Court in *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244:

> "R.C. 5715.19(A) ' "establishes the jurisdictional gateway to obtaining review by the boards of revision," ' *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ***, ¶ 11, quoting *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, ***, ¶ 10, and provides that '[a]ny person owning taxable real property in the county *** may file such a complaint regarding any such determination [including valuation] affecting any real property in the county ***.' And according to our case law, if someone other than the property owner prepares and files the complaint on behalf of the owner, that person must be an attorney or authorized by law to make such a filing." (Parallel citations omitted.) Id. at ¶11.

From the face of the complaint filed in this matter, Ms. Hoosier did not file as an agent of the any of the owners of the parcels; instead, she filed on her own behalf as the tax lien holder. R.C. 5715.19(A) does not provide that the holder of a tax lien on real property has standing to file a complaint. Ms. Hoosier indicated at the BOR hearing that she owns no real property in Montgomery County in her own name. Therefore, she lacked standing to file the underlying complaint on her own behalf.

As a non-attorney, she also no had authority to file the complaint on behalf of another. It is unclear what Ms. Hoosier's relationship is to Tax Ease Funding 2016-1 REO LLC, which acquired parcel number E21 17208 0058 in February 2019, prior to the filing of the complaint. R.C. 5715.19(A) does allow certain non-attorney agents to file on behalf of a corporate entity, including a member of an LLC or a salaried employee. There is no indication in the record before us whether Ms. Hoosier is either a member of the owner LLC or its salaried employee. To the extent she filed on behalf of the LLC through some other non-attorney relationship, the filing of the complaint constituted the unauthorized practice of law. *Sharon Village*, supra. Her relationships to the owners of the other two parcels is not indicated by the record before us. As the complainant, it is Ms. Hoosier's burden to demonstrate that she had standing to file the complaint in his matter. *Soc. Natl. Bank v. Wood Cty. Bd. of Revision*, 81 Ohio St.3d 401 (1998). She has failed to do so, and we find no evidence in the record that otherwise establishes her standing.

Accordingly, the BOE's motion is well taken. This matter is hereby remanded to the Montgomery County Board of Revision with instructions to vacate its decisions as to each of the three subject parcels and dismiss the underlying complaint and countercomplaint. See *C.I.A. Properties v. Cuyahoga Cty. Aud.*, 89 Ohio St.3d 363, 366 (2000).

OHIO BOARD OF TAX APPEALS

KETTERING CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-2216
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - KETTERING CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

STEVE E. SCHLAUTMAN
Represented by:
STEVE SCHLAUTMAN
OWNER
3218 E. 4TH ST.
DAYTON, OH 45403

Entered Wednesday, May 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the appellant board of education's ("BOE") motion to remand with instructions to dismiss the complaint. The appellee property owner, Steve E. Schlautman, did not respond to the motion. We proceed to decide the matter upon the notice of appeal, the motion, and the statutory transcript certified by the auditor.

The BOE argues that the Montgomery County Board of Revision ("BOR") lacked jurisdiction over the complaint because it was either (1) filed by an unauthorized agent, or (2) filed by an individual without independent standing to file such a complaint. The property at issue, parcel number N64 00307 0006, is owned by Mr. Schlautman. The underlying complaint was filed by Dawn Hoosier as "complainant's

agent." At the BOR hearing, Ms. Hoosier stated that she had no relationship to Mr. Schlautman, that she was not an attorney, and that her employer, Tax Ease Ohio, held a tax lien on the property. Although counsel for the BOE moved to dismiss the complaint, the BOR ultimately issued a decision finding value.

The filing of complaints against the value of real property is governed by R.C. 5715.19. Under that section, an owner of real property, the owner's attorney, or a specified agent of the owner, may file a complaint. Those agents specifically authorized by statute to file on an owner's behalf include appraisers, brokers, and accountants. The holder of a tax lien on property is not among those authorized to file on behalf of an owner. Any non-authorized agent filing on behalf of an owner engages in the unauthorized practice of law by doing so. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997). See also *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244. Because Ms. Hoosier indicated she is not an attorney, and does not appear to be any of the other statutorily-specified non-attorney agents who may file, the filing of the complaint in this matter constituted the unauthorized practice of law.

We further find that Ms. Hoosier lacks any independent standing to file the complaint. There is no indication that Ms. Hoosier owns real property in Montgomery County. Accordingly, the complaint she filed against parcel number N64 00307 0006 failed to properly invoke the jurisdiction of the BOR. *Toledo Public Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, ¶10 ("R.C. 5715.19(A) establishes the jurisdictional gateway to obtaining review by the boards of revision ***.").

Based upon the foregoing, the BOE's motion is well taken. This matter is hereby remanded to the Montgomery County Board of Revision with instructions to vacate its decision and dismiss the underlying complaint and countercomplaint. See *C.I.A. Properties v. Cuyahoga Cty. Aud.*, 89 Ohio St.3d 363, 366 (2000).

OHIO BOARD OF TAX APPEALS

WEST CARROLLTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1788
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WEST CARROLLTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

MARY L. MILLER
OWNER
118 SAVOY AVE.
DAYTON, OH 45449

DAWN HOOSIER
8047 BLAIRHOUSE DRIVE
CINCINNATI, OH 45244

Entered Wednesday, May 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is before the Board of Tax Appeals upon the filing of a motion to remand with instructions to dismiss the underlying complaint for lack of jurisdiction, filed by the appellant board of education ("BOE"). By way of the motion, the BOE alleges that the complaint was filed by a person unauthorized to file a complaint on behalf of the property owners. Neither the complainant, property owner, nor county appellees responded to the motion. Based upon the record before us, the motion to remand is granted.

[2] A review of the statutory transcript demonstrates the following. A complaint was filed with the BOR,

which requested that the value of parcel K48 00117 0002 be reduced for tax year 2017. The complaint identified "Miller Mary L" as the property owner; however, "Tax Ease -- Dawn Hoosier" was identified as the non-owner, complainant. Statutory Transcript at Complaint. The complaint also revealed the complainant's relationship to the property as "Tax Lien Holder." Id. The BOE filed a countercomplaint, which objected to the request.

[3] The BOR held a consolidated hearing on this matter, as well as other complaints, which are not the subject of this appeal. As the hearing commenced, Hoosier entered her appearance as a representative of Tax Ease Ohio, made a presentation in favor of the complaint, and examined a witness, Jeanne McAvoy, in support of the complaint. Counsel for the BOE cross-examined Hoosier to clarify her relationship to the subject property and/or property owner. Hoosier conceded that she was neither the property owner nor an attorney. As a result, the BOE moved to dismiss the complaint for lack of jurisdiction, asserting that Hoosier engaged in the unauthorized practice of law and that such action precluded the BOR from considering the merits of the matter. At the BOR decision hearing, none of the BOR members acknowledged the BOE's jurisdictional motion as they proceeded to vote to reduce the subject property's value to $54,640. A written decision that effect was issued and this appeal ensued.

[4] As noted above, the BOE filed this motion to remand with instructions to dismiss the complaint because Hoosier lacked standing to file the complaint and because, by filing the unauthorized complaint, Hoosier engaged in the unauthorized practice of law. As a cumulative affect of these errors, the BOE asserted that the BOR lacked jurisdiction to consider the complaint and that the BOR committed legal error when it issued its value decision.

[5] As the Supreme Court explained in *Toledo Public Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, "[i]t is now well settled that the language of R.C. 5715.19(A) establishes the jurisdictional gateway to obtaining review by the boards of revision." Id. at ¶10. R.C. 5715.19(A) provides that an owner of taxable real property in the county may file a complaint against the valuation of any taxable real property in the county. In addition, certain individuals, in addition to the property owner itself, are entitled to file valuation complaints. "If someone other than the property owner prepares and files the complaint on behalf of the owner, that person must be an attorney or authorized by law to make such filing. *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244, at ¶11. Notably absent from the list of authorized filers in R.C. 5715.19(A) are lienholders. Though a lienholder may have an equitable interest in real property, this board has previously found that holders of such interest do not meet the requirements of the statute and, therefore, complaints filed by holders of equitable interests do not properly vest jurisdiction in boards of revision. See, also, *McNulty v. Ottawa Cty. Bd. of Revision* (June 19, 2012), BTA No. 2010-Y-1200, unreported (holding that although the beneficiary of an IRA trust had an equitable interest in the property, she does not hold legal title and is not the "owner" of the property). While it is true that the involvement of an attorney in filing the complaint itself, even when filed by a person/entity not enumerated in R.C. 5715.19(A), may overcome the jurisdictional hurdle presented, see *Toledo Pubic Schools*, supra, that is not the case here. There is no indication that an attorney was involved in the filing of the complaint itself. Consequently, we find that the complaint, filed by Hoosier, failed to invoke the jurisdiction of the BOR.

[6] Furthermore, we also find that Hoosier engaged in the unauthorized practice of law by filing the complaint on behalf of the property owner. As the court recently affirmed in *Greenway*, supra, "the preparation and filing of a valuation complaint has been held to constitute the practice of law, *Sharon Village* [*v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479, 483 (1997)], and therefore, one must be authorized to engage in that activity." Not only did Hoosier engage in the unauthorized practice of law by filing the complaint, she engaged in such activity at the BOR hearing when she examined McAvoy about the data and methodologies used to derive her conclusion of the subject property's value. In *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439, ¶18, the court concluded that a non-attorney engaged in the unauthorized practice of law by questioning a witness. In doing so, the court stated that "'[l]itigation must be projected * * * according to established practice by lawyers who are of high character, skilled in the profession, dedicated to the interest of their clients, and in the spirit of public service.' *Union Sav. Assn.*, [*v.*

Home Owners Aid, Inc., 23 Ohio St.2d 60, 64 (1970)]. Concomitantly, 'limiting the practice of law to licensed attorneys is generally necessary to protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.' *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, ¶ 40." Id. at 20. Consequently, we find that the complaint, filed by Hoosier, failed to invoke the jurisdiction of the BOR on this additional basis.

[7] Based upon the forgoing, the BOE's motion to remand is granted. This matter is, therefore, remanded to the BOR with instructions to vacate its decision and to reinstate the subject property's initially assessed value.

OHIO BOARD OF TAX APPEALS

JOANNE ROSS-SMITH, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-276

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOANNE ROSS-SMITH
OWNER
3757 PRINCETON BLVD
S. EUCLID, OH 44121

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, May 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the board of revision ("BOR"). Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the BOR, and appellant's notice of appeal.

On February 19, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The transcript shows that there is no record of such a decision having been issued.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the

appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LOREN NAJI, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-232

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LOREN NAJI
4814 ST. CLAIR AVE.
CLEVELAND, OH 44103

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, May 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board

of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

FRED GREEN, (et. al.), Appellant(s), vs. WOOD COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-2054 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRED GREEN
14241 RIVER ROAD
FORT MYERS, FL 33905-7400

For the Appellee(s) - WOOD COUNTY BOARD OF REVISION
Represented by:
PAUL A. DOBSON
PROSECUTING ATTORNEY
WOOD COUNTY
ONE COURTHOUSE SQ, 4TH FLR
BOWLING GREEN, OH 43402-2431

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner Fred Green appeals from a decision of the Wood County Board of Revision ("BOR") granting penalty remission for the first half of 2017 but denying remission for the second half of 2017. No hearing was requested, and no party filed additional written argument. We now decide the case on the notice of appeal and the transcript certified by the auditor ("S.T.").

[2] R.C. 5715.39 governs the remission of late payment penalties for real property taxes. That auditor shall grant remission for the following reasons:

> (1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.
>
> (3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

(4) The taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(5) With respect to the first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer.

[3] Even if penalty remission is not granted under R.C. 5715.39(B), the BOR must also remit penalties if a "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

[4] Mr. Green did not timely pay either the first or second half of 2017. The first half was due on February 6, 2018, and the second half was due July 13, 2018. Mr. Green paid both on September 17, 2018, after realizing he forgot to pay either. He alleges the county did not send his tax bill to the correct address. The BOR granted remission for the first half but denied remission for the second half. It appears the BOR found Mr. Green showed good cause to have the first half remitted but not the second half. See R.C. 5715.39(C). Mr. Green appealed to this board requesting penalties for the second half of 2017 be remitted.

[5] Because the facts of this case do not match any of the fact patterns found in R.C. 5715.39(B) or (C), this board finds penalties should not be remitted for the second half of 2017. The record does not show the county auditor or treasurer were negligent in any duty relating to the levy or collection of taxes. See R.C. 5715.39(B)(1). Likewise, neither R.C. 5715.39(B)(3) nor (B)(5) apply because the late payment was not due to severe illness or the satisfaction of a mortgage. R.C. 5715.39(B)(4) does not apply because Mr. Green concedes the payment was untimely. While R.C. 5715.39(B)(2) could apply because Mr. Green claims he did not receive a tax bill, that subsection requires the taxpayer to make "a good faith effort to obtain such bill within thirty days after the last day for payment of the tax." Here, there is no evidence Mr. Green made such an attempt, and it appears certain he did not make such an attempt because he admits he did not even realize his failure to pay until September 2018, which is more than thirty days after payment was due. We also find R.C. 5715.39(C) does not apply because penalties can be imposed on a single missed payment, let alone two missed payments as is the case here. See *Snyder v. Zaino* (May 9, 2003), BTA No. 2003-V-246, unreported. For these reasons, this board denies the request for penalty remission for the second half of 2017.

OHIO BOARD OF TAX APPEALS

NEIL BOON, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1884

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NEIL BOON
3524 LINWOOD AVENUE
CINCINNATI, OH 45226

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant Neil Boon appeals from a decision of the Hamilton County Board of Revision ("BOR") determining the subject property's true value for tax year 2017. Appellant presented testimony at this board's hearing including an appraisal report. We now consider the matter on the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and this board's hearing record ("H.R.").

[2] The subject property is a 0.17 acre lot improved with a single-family residence, which appellant purchased in 2012 for $152,000. The auditor valued the subject at $302,140 for tax year 2017, and appellant filed a decrease complaint with an opinion of value of $152,000 per the sale price. At the BOR hearing, appellant presented a one-page MLS spreadsheet containing sales data. Appellant generally testified about the subject property but did not supply an appraisal. The auditor gave a summary report, not an appraisal, recommending the auditor's value be affirmed. The BOR affirmed the auditor's value, and appellant filed a notice of appeal with this board. Appellant changed his opinion of value to $240,000 in accordance with fresh appraisal created after the BOR issued its decision. H.R. at 6. At this board's hearing, appellant relied almost solely on the appraisal. However, the appraiser did not appear to authenticate the appraisal. The BOR filed a brief in lieu of appearance.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value

determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported, at 2. The Ohio Supreme Court has repeatedly instructed this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7.

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, we presume the 2012 sale is too remote, and, having reviewed the record, we find no evidence the sale price continues "to be a reliable indication of value despite the passage of time." Id.

[5] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile data. An appraiser adjusts for the differences between the comparables and the subject. See *Gallick*, supra.

[6] Here, appellant supplied the appraisal of James Douglas. Mr. Douglas opined a value of $240,000 as of the tax-lien date using the sales comparison approach to value. However, an appraisal is not a self-authenticating document. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No.

[7] 2006-K-2144, unreported. This board has long held it must generally reject an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. Id. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Without the appraiser, we must find the report is unreliable hearsay. Because appellant relied solely on the appraisal, we find he has failed to carry his burden.

[8] Accordingly, we order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER 019-0003-0068

TRUE VALUE

$302,140

TAXABLE VALUE

$105,750

OHIO BOARD OF TAX APPEALS

CHENG LU, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1879 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - CHENG LU
7430 WOODCROFT DRIVE
CINCINNATI, OH 45241

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered following this board's issuance of a show cause order, in which we ordered the parties to show why this matter should not be dismissed as having been untimely filed. No one responded to the order. We therefore proceed to decide the matter upon the notice of appeal and the statutory transcript certified by the auditor pursuant to R.C. 5717.01.

Appellant appeals from decisions of the Butler County Board of Revision ("BOR") determining the value of parcel numbers M5620-058-000-011, A0700-254-000-002, and M5620-232-000-078, for tax year 2017. The BOR issued its decision on June 19, 2018. Appellant filed the appeal with this board, and with the BOR, on November 5, 2018, i.e., 139 days later.

R.C. 5717.01 allows for an appeal from a decision of a county board of revision to be taken to this board, provided such appeal is filed with this board and the BOR *within thirty days* of the mailing of the BOR's decision. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. **** R.C. 5717.01 is specific and mandatory. *** Failure to comply with the appellate statute is fatal to the appeal." See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely manner.") Thus, it is clear that an appeal filed more than thirty days after the BOR's decision is mailed fails to properly invoke this board's jurisdiction.

There is no dispute that this appeal was filed more than thirty days after the BOR mailed its decisions. Appellant has therefore not complied with the statutory requirements for filing an appeal. It is therefore the order of this board that this matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MARY LOU BOLCE, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1518 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY LOU BOLCE
Represented by:
JACKIE L. HAGER HOOVER
ATTORNEY AT LAW
JACKIE LYNN HAGER COMPANY
6316 NICHOLAS DRIVE, # 340707
COLUMBUS, OH 43234

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant Mary Lou Bolce appeals from a decision of the Hamilton County Board of Revision ("BOR") determining the subject property's true value for tax year 2017. Appellant presented testimony at this board's hearing including the report and testimony of appraiser William Grauvogel. The county appellees filed written argument in lieu of appearing at our hearing. We now consider the matter on the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, this board's hearing record ("H.R."), and appellant's exhibits.

[2] Appellant's family purchased the subject, a lot improved with a two-family residence, in 1915, and appellant bought the home from her mother's estate in 2016 for between $150,000 and $175,000. The transaction, however, was not merely a straight real estate transaction but a comprehensive estate settlement, i.e., appellant and her brother arrived at the $150,000 after accounting for other estate assets, obligations, and possible devises. The auditor valued the subject at $464,190 for tax year 2017, and appellant filed a decrease complaint with an opinion of value of $355,000 per Mr. Grauvogel's appraisal. The auditor presented the appraisal of Susan Spoon who valued the subject at $406,000. Ms. Spoon testified she considered Mr. Grauvogel's appraisal as competent but believed her sales were more comparable to the subject. The BOR adopted Ms. Spoon's appraisal at $406,000, and appellant appealed to this board.

[3] The county appellees filed a brief in lieu of appearance at this board's hearing. Appellant testified to the condition of the subject and presented relevant return schedules as well as rent rolls. Mr. Grauvogel testified to his appraisal. He also critiqued Ms. Spoon's appraisal.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7).

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). Here, the parties appear to agree the 2016 sale was not arm's-length. The parties had a preexisting relationship, i.e., appellant purchased the subject from her brother as part of the settlement of their mother's estate. While not a necessary condition, this board does consider if an estate sold the property on the open market. *TCP Oberlin LLC v. Lorain Cty. Bd. of Revision* (Aug. 3, 2015), BTA No. 2014-3332, unreported. This sale did not occur on the open market. Moreover, the uncontroverted evidence is the sale price was arrived at as part of a comprehensive estate settlement, which considered many other assets, obligations, and factors. Accordingly, this board does not find the sale is the best evidence of value.

[6] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). Both appellant and the auditor presented appraisals in this case. This board finds Mr. Grauvogel's appraisal to be the best evidence of value for tax year 2017. We find his appraisal to be more persuasive than Ms. Spoon's appraisal for the four following reasons.

[7] First, Mr. Grauvogel's used an appraisal rubric explicitly designed for small residential income producing property. For a sales comparison approach to value, Mr. Grauvogel's appraisal rubric accounts for more variables specific to rental properties than does the restricted residential appraisal report used by Ms. Spoon. See H.R. at 22. He further testified that he was well acquainted with the rubric Ms. Spoon used because he helped created the rubric while a supervisor at the auditor's office. Mr. Grauvogel testified the rubric Ms. Spoon used is not ideally suited for an appraisal of a two-family rental. Second, the sales Mr. Grauvogel utilized were generally more recent to tax-lien date. All of Mr. Grauvogel's comparable sales occurred within six months of tax-lien date (before or after). Ms. Spoon's sales were further from tax-lien date with some as far out as eighteen months. Third, Mr. Grauvogel's comparables are generally closer geographically. For example, Mr. Grauvogel's comparables ranged from 0.04 miles to 0.47 miles in terms of distance from the subject. Ms. Spoon's comparables ranged from 0.06 miles to 0.69 miles. Finally, Mr. Grauvogel supported his value with an income capitalization approach, which was not developed in Ms. Spoon's appraisal. While Mr. Grauvogel ultimately adopted the sales comparison approach after reconciliation, his income approach supports his finding that Ms. Spoon and the auditor overvalued the subject property.

[8] We note the county appellees' written argument criticizes appellant for not presenting Mr. Grauvogel's testimony at the BOR hearing first. Appellant testified she did not bring Mr. Grauvogel to the BOR hearing after being informed by a BOR employee that his testimony was unnecessary. Regardless, we see no reason

to disregard Mr. Grauvogel's appraisal. The county appellees also argue Ms. Spoon's appraisal used a higher square footage figure Mr. Grauvogel used, calling into question Mr. Grauvogel's figures. That does not appear to be correct though. Ms. Spoon stated a gross living area amount of 3,180, and Mr. Grauvogel used 3,278. The auditor also argues Ms. Spoon made fewer adjustments to her comparables. That also does not appear to be correct. Ms. Spoon's gross adjustments range from 11% to 16%. Mr. Gauvogel's gross adjustments range from 10.9% to 14.4%. We do not find the county appellees' criticisms persuasive.

[9] Consequentially, we order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER 046-0002-0065-00

TRUE VALUE

$355,000

TAXABLE VALUE

$124,250

OHIO BOARD OF TAX APPEALS

ROBERT W. RETTICH, III AND KATHY L. RETTICH, (et. al.),	CASE NO(S). 2018-1145
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ROBERT W. RETTICH, III AND KATHY L. RETTICH
Represented by:
ROBERT RETTICH
119 FARMERSVILLE PK.
GERMANTOWN, OH 45327

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owners appeal decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels D13 00104 0052, D13 00104 0053, and D13 00104 0054, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject properties are three, contiguous vacant lots. For tax year 2017, the auditor assessed parcel D13 00104 0052 at $10,070 and parcel D13 00104 0053 at $9,860. However, there is conflicting evidence in the record about the initially assessed value for parcel D13 00104 0054. The BOR decision and DTE Form 3 noted that the parcel was initially assessed at $73,300 but the property record card noted that the parcel was initially assessed at $9,640, which the BOR members confirmed at both the merit and decision hearings. Because the property record card is the official record of pertinent information regarding real property, we presume that parcel D13 00104 0054 was initially assessed at $9,640. See R.C. 5713.03 (the property record is the place where the county auditor should "record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.").

The property owners filed a single complaint with the BOR, which requested that each of the parcels be

revalued at $5,000. At the BOR hearing on the matter, property owner Kathy L. Rettich appeared to submit argument and/or evidence in support of the complaint. In support of the complaint, she testified that the property owners inherited parcels D13 00104 0052 and D13 00104 0053, as well as the facts and circumstances of their purchase of parcel D13 00104 0054 for $5,000 in November 2017. According to the BOR decision recording, the BOR members voted to retain the initially assessed values for all three of the subject properties. The BOR subsequently issued written decisions to that effect and this appeal ensued.

At this board's hearing, the property owners expanded upon the facts and circumstances of their purchase of parcel D13 00104 0054 in November 2017, the similarity between the subject properties, and the character of the neighborhood in which the subject properties were located. They submitted a packet of documents to support their testimony.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

We begin our analysis with the property owners' $5,000 purchase of parcel D13 00104 0054 in November 2017. We are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The presentation of the sale documents, by the property owners at this board's hearing, created a rebuttable presumption that this sale was a recent, arm's-length transfer indicative of the parcel's value. *Terraza*, supra at ¶32 ("Once the BOE provided basic documentation of the sale, Terraza had the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value.") As the opponent of relying upon the subject sale, the BOR had the burden to demonstrate that the $5,000 sale of parcel D13 00104 0054 was not the best indication of value. The BOR failed to satisfy such burden and, as a result, the record is devoid of any evidence that rebutted the presumptions accorded to the subject sale. Though the BOR rejected the sale because the parcel was not offered on the open market, this board has consistently rejected that argument. E.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Apr. 28, 2009), BTA No. 2006-H-1622, unreported at 9 ("[T]his board has held that sale offers not made on the open market in the traditional sense, i.e., listed by a realtor, do not necessarily render a sale less than arm's length."). Accord *N. Royalton City School Dist. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. We find, therefore, that the property owners' $5,000 purchase of parcel D13 00104 0054 is the best indication of its value.

We proceed to consider the value of parcels D13 00104 0052 and D13 00104 0053. A review of the property record cards for all of three parcels indicate that they are strikingly similar in character, i.e., vacant, size, i.e., average 6,300 square feet +/- 300 square feet, and location, i.e., contiguous parcels. The property owners' testimony confirms these facts. They also demonstrated their familiarity with the neighborhood in which the subject properties were located. Because of these unique similarities, we find it appropriate to value these two parcels consistent with the $5,000 sale of parcel D13 00104 0054 in November 2017. See *Ross v. Cuyahoga Cty. Bd. of Revision*, 146 Ohio St. 3d 12, 2015-Ohio-3443.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus City School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, ¶7 ("[O]ur case law has repeatedly instructed the BTA to eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record."). In doing so, we conclude that the property owners satisfied their evidentiary burden on appeal. It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER D13 00104 0052

TRUE VALUE: $5,000

TAXABLE VALUE: $1,750

PARCEL NUMBER D13 00104 0053

TRUE VALUE: $5,000

TAXABLE VALUE: $1,750

PARCEL NUMBER D13 00104 0054

TRUE VALUE: $5,000

TAXABLE VALUE: $1,750

OHIO BOARD OF TAX APPEALS

A & I PROPERTY MANAGEMENT HOLDINGS AND DEVELOPMENT, LLC, (et. al.),	CASE NO(S). 2018-950
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - A & I PROPERTY MANAGEMENT HOLDINGS AND DEVELOPMENT, LLC
Represented by:
ROBERT B. PRESTON, III
220 MARKET AVENUE SOUTH, SUITE 1000
CANTON, OH 44702

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

MARLINGTON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner A & I Property Management Holdings and Development, LLC appeals from a decision of the Stark County Board of Revision ("BOR") affirming the auditor's value of five parcels for tax year 2017. The parties waived their appearances at this board's hearing. The appellant and the appellee school board filed written argument. We now decide the case on the notice of appeal, the transcript certified by the auditor, and the parties' written arguments.

The subject property is a multi-parcel campground, which appellant purchased in October 2016 for $2,473,000 in an arm's-length transaction. The issue in this case is whether a portion of that sale price should be allocated to non-realty. The Ohio Supreme Court has been clear that "the party advocating for a reduction below the full sale price due to an allocation to other assets bears the burden of showing the

propriety of such action and must provide 'corroborating indicia' of the appropriate allocation." *Arbors East RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property['s] value" for real property tax valuation purposes. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶ 11. Here, appellant argues $1,514,900 of the sale price should be allocated to non-realty, but the appellee school board argues there is no "sufficient evidence" to support that claim so the property must be valued at the "full sale price." See *Arbors East*, supra.

Appellant purchased the campground on October 4, 2016, and the title agent filed the conveyance fee statement that same day. The conveyance fee statement allocates no portion of the sale price "for items other than real property." The finance settlement statement likewise allocates no portion of the sale price to personal property. However, appellant has also submitted the purchase agreement titled "contract for sale of real estate & purchase of business assets." The purchase agreement states the sale includes "all buildings, structures and improvements of every nature whatsoever now situated on the Real Estate, and all fixtures, machinery, appliances, equipment, current Inventory, vehicles and personal property of every nature whatsoever of the Business now owned by the Seller." The non-realty is abbreviated in the contract as "the Assets" and described more fully in "Exhibit B" of the purchase agreement. Exhibit B states the following are included in the sale:

- All office equipment owned by park to operate business on a day to day basis.
- All inventory that is owned by park for convenience store, trailer repair, etc.
- All equipment that is currently in place that is necessary for day to day operation.
- All inventory, equipment, and tools that is owned by park for maintenance.

The items are itemized into the following categories: heavy machinery and earth moving equipment; vehicles; golf carts; park electrical systems and equipment; parks plumbing system and equipment; swimming pool and spraypark; convenience store and inventory; office equipment; park wifi system; restaurant equipment; laundromat. Each category contains various pieces of property and a corresponding stated value, e.g., the New Holland 675E Backhoe/Loader is valued at $35,000. An addendum to the purchase agreement clarifies that several trucks, trailers, and a motor home are not included in the sale. The purchase price in the contract is $2,500,000. However, the testimony and settlement statement show an ultimate sale price of $2,473,000.

The BOR rejected appellant's allocation evidence. The BOR's recorded decision makes clear the BOR believed it had made "adequate concessions" to the property owner during a 2016 BOR case. It found the 2017 request "aggressive" given the "condition of the personal property." While somewhat unclear, it appears the BOR may have found the stated values in the purchase agreement were too high. Appellant filed a notice of appeal with this board, and the parties briefed the issues. No party filed an appraisal with this board or the BOR.

Before turning to the merits, we address the school board's preliminary argument that appellant's valuation complaint is barred by R.C. 5715.19(A) because of the 2016 complaint. The relevant Stark County triennial period is 2015-2017. The school board argues appellant was not permitted to file the 2017 complaint because the school board filed a complaint for tax year 2016. However, R.C. 5715.19(A) only bars the *same* party from filing multiple complaints in a triennial period as the Ohio Supreme Court recently affirmed in *Pavilonis v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 18, 2018-Ohio-1480. Here, the school board filed the 2016 complaint, which means appellant was not barred from filing the 2017 complaint. See also *Peoples Savings & Loan Company v. Geauga Cty. Bd. of Revision* (Dec. 14, 2018), BTA No. 2017-1311, unreported. Accordingly, appellant's complaint is not jurisdictionally barred. While not raised by the parties, we also find collateral estoppel inapplicable because each tax year stands on its own and because the 2016 BOR decision was not based on a finding of allocation. *Olmstead Falls Bd. of*

Edn. v. Cuyahoga Cty. Bd. of Revision, 122 Ohio St.3d 134, 2009-Ohio-2461; *Conneaut Dev. Co. v. Ashtabula Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-1824, unreported (collateral estoppel inapplicable when no ultimate factual finding made in prior proceeding).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7).

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, a sale sometimes includes non-realty, which should be excluded from the real property value. *Arbors East*, supra. While not essential, both our cases and the Ohio Supreme Court's cases have attached meaningful weight to "contemporaneous allocation of the sale price to the assets sold." Id. at ¶ 22. In fact, the court held the "fact that allocation was negotiated by the parties" militates "in favor of affirming reliance on that allocation." Id. (citing *W.S. Tyler Co. v. Lake Cty. Bd. of Revision*, 57 Ohio St.3d 47 (1991)). A party may, as the court has held, also bolster or rebut that allocation with appraisal evidence. *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶ 35.

Here, the record is clear appellant negotiated the asset allocation. No party has submitted appraisal evidence to show the property values in the allocation were overvalued or showing what the real property value should be. Accordingly, we find the allocation contained in the purchase agreement to be credible and order allocation as such. We recognize, as the school board argues, that the conveyance fee statement stated the purchase price was only for the sale of real property. However, the conveyance fee statement is not dispositive when evidence shows the conveyance fee statement "did not reflect the true value of the real-estate component of the sale." *Arbors East*, supra (citing *Buckeye Terminals*, supra.).

We have also reviewed appellant's math and agree $1,514,900 of the purchase price should be allocated to real property. The sum of assets from Exhibit B is $1,525,900; however, $11,000 was correctly subtracted from the calculation per the addendum, which removed the New Holland MC28 mower. We do note a discrepancy between the purchase agreement price ($2,500,000) and the settlement statement/conveyance fee statement price ($2,473,000). It appears the parties must have either modified the price or taken fees into account at closing. No party has addressed the discrepancy, and so we assume the later price ($2,473,000) is accurate. Taking into account the non-realty allocation, we order the properties valued at a combined $958,100 for tax year 2017. Per *FirstCal Industrial 2 Acquisition L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, we order the properties valued in accordance with the following values:

PARCEL NUMBER 3104654

TRUE VALUE

$357,120

TAXABLE VALUE

$124,990

PARCEL NUMBER 3104652

TRUE VALUE

$425,780

TAXABLE VALUE

$149,020

PARCEL NUMBER 3105077

TRUE VALUE

$68,550

TAXABLE VALUE

$23,990

PARCEL NUMBER 3100951

TRUE VALUE

$49,160

TAXABLE VALUE

$17,210

PARCEL NUMBER 3105078

TRUE VALUE

$57,490

TAXABLE VALUE

$20,120

OHIO BOARD OF TAX APPEALS

THERESA LOUISE BARLEY, (et. al.), Appellant(s), vs. GREENE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-948 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THERESA LOUISE BARLEY
Represented by:
THERESA BARLEY
OWNER
2454 US 638 S.
XENIA , OH 45385

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel C05000100020002900, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and any written argument submitted by the parties.

[2] The subject property was initially assessed at $156,880. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $140,000 based upon an appraisal report. At the BOR hearing on the matter, the property owner and her husband testified that they sought a home-improvement loan from a credit union, which required an appraisal report to be performed. They argued that such appraisal report was a better indication of the subject property's value because the appraiser performed an interior inspection. They also testified about the condition of the subject property, specifically water damage in the home's unfinished basement. The BOR ultimately rejected their arguments and/or evidence and voted to retain the subject property's initially assessed value. The BOR issued a written decision to that effect and this appeal ensued. At this board's hearing, the property owner and her husband appeared to submit additional argument and/or evidence into the record. The property owner included written argument, in her evidentiary packet of documents, which fully explained her assertion that the county appellees erred when they valued the subject property.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[4] In this matter, the property owner primarily relied upon an appraisal report performed by Jill R. Kinnard, which opined the value of the subject property to be $140,000 as of November 3, 2017. For two main reasons, we do not find this appraisal report to be competent, credible, and probative evidence of the subject property's value. First, the appraiser did not appear at the BOR hearing or this board's hearing, to authenticate the appraisal report, to testify regarding her professional credentials and the data and methodologies utilized in deriving the valuation conclusion, or to be questioned by members of the BOR of this board's attorney examiner. For example, a review of the BOR hearing record indicates that one the BOR members was skeptical of the appraiser's analysis, specifically because she failed to adjust the comparable properties to account for differences in site size. If this board had had the opportunity to question the appraiser, we would have asked how the appraiser concluded that the subject property should be valued at $140,000 without making any adjustments. The comparable sale properties differ from the subject property in very fundamental and meaningful ways, i.e., site size, design of the homes, effective age of the homes, number of bedrooms contained in the homes, square footage of the homes, type of foundation, type of garage, and outbuildings. However, the appraiser failed to account for these differences by making adjustments to the comparable sale properties. For example, the appraiser noted that she gave the most weight to comparable sale 3. Although this comparable property was a five-acre site that included a 2,080 square feet ranch style home situated on a crawl space, with four bedrooms and two baths, two-car attached garage, and two outbuildings, no adjustments were made to account for differences with the subject property's features, a 9.376-acre site that included a 2,149 square feet Cape Cod style home situated on a full basement, with five bedrooms and two baths, four-car detached garage, and no outbuildings. As the Eighth District Court of Appeals noted, "[t]here has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning." *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11. "An expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion." *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). See, also, *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported.

[5] Second, the appraisal report opined the subject property's value as of November 3, 2017, not as of the tax lien date, January 1, 2017. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of" the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996) ("We emphasize that the BTA '*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." (Parallel citation omitted.)).

[6] We acknowledge that the court has held that even an appraisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data contained in such report. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25. In this case, however, given the deficiencies with the appraisal report as noted above, we find that the appraisal does not contain the same level of reliability as in *Copley-Fairlawn*. As the court pointed out, "[t]he validity of every comparable turns on whether, and to what extent, the sale is in fact comparable, and an appraiser must make adjustments to account for differences ***." *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 412, 2016-Ohio-1506, ¶32.

[7] At this board's hearing, the property owner also asserted that the condition of the home necessitated a reduction to the subject property's value. Unfortunately, the property owner failed to quantify how much the defects negatively impacted the subject property's value. For example, the appraisal report noted that the property owner believed that the roof on the home needed to be repaired. However, the record is devoid of any evidence quantifying how the disrepair of the roof impacted the subject property's value, i.e., whether the roof's condition diminished the subject property's value by $1,000 or $10,000. In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev*., 75 Ohio St.3d 227, 228, *** (1996) (stating '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." Id. at ¶7.

[8] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus City School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7 ("[O]ur case law has repeatedly instructed the BTA to eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record."). In doing so, we conclude that the property owner failed to provide competent and probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

TRUE VALUE

$156,880

TAXABLE VALUE

$54,910

OHIO BOARD OF TAX APPEALS

WILLIAM S. JOHNSON, (et. al.),

Appellant(s),

vs.

GREENE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-912

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM S. JOHNSON
Represented by:
WILLIAM JOHNSON
P.O. BOX 62
CLIFTON, OH 45316

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter comes before this board upon a notice of appeal filed by property owner William Johnson from a decision of the Greene County Board Revision ("BOR") valuing parcel number B42000500120020000 for tax year 2017. We consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor pursuant to R.C. 5717.01, the record of the hearings before this board, and motions and responses filed by the parties.

[2] The subject parcel is improved with a single-family dwelling. The county auditor valued the parcel at $113,630 for tax year 2017. Notably, 2017 was the year of a triennial update of values in Greene County. Appellant filed a complaint seeking a decrease in value to $75,250, based on a prior year's value. S.T., Ex. A. At the BOR hearing, appellant testified that the auditor's office inspected the property for tax year 2014 and concluded the property's condition was "very poor." He indicated the property had undergone no renovations since it was built in 1977, and that it suffered from numerous defects, e.g., a leaking hot water heater, lack of a functioning furnace, termite damage, and a leaking roof. Appellant stated that such defects make the property uninhabitable. S.T., Ex. E. The BOR issued a decision reducing the value of the property to $95,430.

[3] At the outset, we address appellant's motion to strike an exhibit included in the statutory transcript certified by the auditor, i.e., Exhibit J. The exhibit consists of the minutes of the Greene County Board of Revision

from August 10, 2018, describing the BOR's consideration of the underlying complaint. Essentially, the minutes state that the BOR determined the subject property's condition should be changed to "poor" based on appellant's testimony at the hearing, and that such change in condition resulted in the BOR's decision to reduce value. In addition, the minutes indicate that the BOR reviewed "every sale in the subject properties[sic] neighborhood" and found only two sales below $100,000, consisting of a buildable lot and a bank sale. The minutes indicate that the sales "provide an indication of values in the subdivision." S.T., Ex. J.

[4] Appellant moves to strike Exhibit J from the statutory transcript, arguing that the transcript may only include the evidence offered and considered by the board of revision in rendering its decision. See R.C. 5717.01. Because the minutes are dated *after* the date the BOR issued its decision (July 6, 2018), and *after* the date of this appeal (August 1, 2018), appellant argues Exhibit J is not properly part of the record before us. The auditor explained at hearing that the BOR only formally explains the basis for its decisions in those decisions that are appealed; he indicated such explanation is in response to admonitions from this board to boards of revision to provide such explanation. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 (holding the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated).

[5] R.C. 5715.08 requires boards of revision to "take full minutes of all evidence given before the board," and requires the secretary of the board to preserve "all minutes and documentary evidence offered on each complaint." When an appeal from a board of revision decision is appealed to this board, R.C. 5717.01 requires the board of revision to certify to this board "a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith." As the Supreme Court has recently held, the evidence offered in connection with the complaint is not limited only to the complainant's evidence; instead, the board of revision itself may elicit its own evidence. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶9. The only evidence referenced in Exhibit J beyond that presented by appellant consists of two specific sales in the subject property's neighborhood, neither of which appear to have been dispositive of its decision. While we acknowledge that a board of revision's authority over its decision ceases upon the filing of an appeal to this board, see *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363 (2000), it does not appear that the BOR took any action in this matter after the institution of this appeal, other than the ministerial act of writing down the reasoning behind its decision.

[6] Based upon the foregoing, we hereby deny the appellant's motion to strike Exhibit J from the record before us, and accordingly also deny the related motion for sanctions.

[7] Due to confusion about the hearing date in this matter, resulting from unconsolidation of this matter from another appeal brought by Mr. Johnson, the parties appeared at separate dates for hearing. At the first, held on October 24, 2018, the county appellees appeared through counsel and offered the testimony of Greene County Auditor David Graham. Mr. Graham testified that the condition of the subject property was changed from "very poor" to "fair" during the 2017 triennial update in the county; however, based on the evidence appellant presented at the BOR hearing, the BOR determined that the property's condition should be "poor." Oct. 24, 2018 H.R. at 11-12. Such condition change resulted in a new, lower value of $95,430 using the county's value model, which is developed from area sales. Id. at 12-13.

[8] At the second hearing, held on October 31, 2018, appellant appeared and reiterated his argument that the condition of the property should be "very poor," as was determined by the auditor's staff after an interior inspection for the property for tax year 2014. He cited to this board's decision in *Johnson v. Greene Cty. Bd. of Revision* (Apr. 3, 2018), BTA No. 2017-945, unreported, where we held the value of the same property for tax year 2016 was improperly changed by the auditor, and that the prior year's value of $75,250 should carry through to 2016. Appellant testified that the condition of the property has remained unchanged since 2014, though he did indicate that he repaired the garage door sometime after tax lien date. He presented no independent evidence of value.

[9] As the appellant in this matter, the burden is on the owner "to demonstrate that the value [he advocates] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. This board must independently evaluate the evidence to determine the true value of the property. Further, as the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

[10] Generally, the value determined by an auditor will carry forward through a three-year interim period, until the auditor revalues properties as the result of a sexennial reappraisal or a triennial update. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶20; *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶28. The year at issue in this matter, 2017, was the year a triennial update of values was determined in Greene County. Because the auditor was under a statutory duty to revalue the property for tax year 2017, he was not required to carry forward the earlier year's value.

[11] Nor was he required to carry forward any earlier finding of the condition of the property. Appellant essentially argues that once a property's condition is determined by the auditor, it cannot improve unless some change has been made to the property; instead, without outside intervention, over time it will only decrease in value. Such argument fails to account for the relative nature of a property's condition rating in the auditor's records. The International Association of Assessing Officers has explained that, in rating a property's condition for purposes of an assessment system, "[r]ating schemes can be based on an absolute standard, one that applies to all properties in the system, or they can be based on a relative standard, one that changes from neighborhood to neighborhood or from one group of properties to another." The International Association of Assessing Officers, *Property Appraisal and Assessment Administration* 115 (1990). Accordingly, a property's condition could be average for its neighborhood, but fair when compared to properties in another neighborhood. Likewise, as the condition of properties in a county changes from year to year, a property's condition relative to others may change over time.

[12] Moreover, we do not find that determination of a property's condition in a prior year controls the determination of condition in an earlier tax year, for the reasons explained above. As the Supreme Court explained in *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461:

> "First, we regard it as elemental that for purposes of any challenge to the valuation of real property, each tax year constitutes a new 'claim' or 'cause of action,' such that the determination of value for one tax year does not operate as res judicata that would bar litigation of value as to the next tax year. ***
>
> "***
>
> "As a matter of both case law and elementary principles, each tax year should be determined based on the evidence presented to the assessor that pertains to that year. We have so held in the past. See *Freshwater* [*v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997)], *** ('When the BTA makes a determination of true value for a given year, such determination is to be based on the evidence presented to it in that case, uncontrolled by the value assessed for prior years'); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609, 612, *** (party that challenges the county's valuation at the BTA need not prove that determination of value as to earlier tax year was wrong because the 'determination of taxable value as of a given tax lien date does not involve the valuation at a prior tax lien date.').
>
> "*** Quite simply, neither a board of revision, nor the BTA, nor this court has authority to adjudicate the value for a tax year that as a procedural matter, is not before the respective tribunal.

> See *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285, ***, ¶ 14.To presume that the earlier year's value was correct while having no authority to determine its validity would interfere with the statutory mandate that the assessor should determine the *correct* value *as of the tax-lien date of the current tax year*." (Emphasis sic.) (Parallel citations omitted.) Id. at ¶16-21.

See also *State ex rel. Mars Urban Sols., L.L.C. v. Cuyahgoa Cty. Fiscal Officer*, Slip Opinion No. 2018-Ohio-4668, ¶12. It is appellant's burden to prove that the BOR's determination of the property's condition and its determination of the subject property's value is incorrect. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4022, ¶11. He cannot simply rest on an earlier year's determination. See *Jakobovitch*, supra, at ¶22 (owner's argument that computer-assisted mass appraisal system was not proper failed because owner's burden of proof not met in the first instance).

[13] Appellant has presented no independent evidence of value. Instead, he seeks simply to carry forward the earlier value based on the auditor's earlier determination of the property's condition. But whether the condition of the subject property is "fair" as the auditor determined for tax year 2017, "poor" as the BOR determined for tax year 2017, or "very poor" as the auditor determined for tax year 2014, is not the question before us. This board is charged with independently determining the value of the subject property. The condition of the property is but one variable in the equation leading to the determination of the property's true value in money. Appellant has provided no evidence of the effect that a change in the condition from "poor" to "very poor" would have on the value of the property. Unlike the prior case involving this property (BTA No. 2017-945), the tax year before us in this case was the year in which the county auditor was statutorily required to revalue the property. He did so, and a presumption of regularity attaches to the auditor's actions. *Gaston v. Medina Cty. Bd. of Revision*, 133 Ohio St.3d 18, 2012-Ohio-3872, ¶16. The burden is on appellant to prove his right to a different value. He has failed to do so.

[14] We do, however, find support for the reduction in value determined by the BOR. The Supreme Court has recently reiterated that this board must "eschew a presumption of validity of the BOR's value and instead perform its own independent weighing of the evidence in the record." *Columbus City Schools*, supra, at ¶7. Upon the record before us, we find the evidence supports the BOR's reduction in value. The BOR considered appellant's evidence regarding the condition of the property, found it probative, and determined that the condition should be "poor" as of tax lien date. It then used its computer-assisted mass appraisal system ("CAMA") to determine a new value for the property based on the change of that single input. In addition, the BOR looked to other neighborhood sales to support the value determined by the CAMA system. We find such analysis supports the reduction granted.

[15] It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$95,430

TAXABLE VALUE

$33,400

OHIO BOARD OF TAX APPEALS

DOUGLAS FREER, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-805

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DOUGLAS FREER
Represented by:
JEFFREY P. POSNER
ATTORNEY AT LAW
3393 NORWOOD ROAD
SHAKER HTS., OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner Douglas Freer appeals from a decision of the Cuyahoga County Board of Revision ("BOR"), which affirmed the fiscal officer's valuation of the subject property at $127,800 for tax year 2017. No hearing was requested, and no party filed written argument. We now consider the matter on the notice of appeal and the statutory transcript ("S.T.") certified by the fiscal officer.

[2] The subject is a two-family rental property situated on nearly 0.24 acres. The most recent sale appears to have been a $0 transfer in January 2007. The fiscal officer valued the subject at $127,800 for tax year 2017, and appellant filed a decrease complaint requesting a value of $108,000 per a 2015 finance appraisal. However, no party appeared to discuss the details surrounding the appraisal nor did the appraiser testify. Instead, counsel presented an email from appellant claiming the appraisal was created during a refinance transaction and claiming the report was relied upon by a lender.

[3] The BOR rejected appellant's arguments, stating:

> "Counsel for property owner relied on a 2015 appraisal of the Subject, completed for financing purposes. The appraiser was not available to answer the Boards questions. Similar properties, within the Subject's neighborhood that sold in closer proximity to tax lien, support current fiscal value. No change." S.T., Ex. E.

[4] Appellant then filed a notice of appeal with this board but did not request a hearing. Again, no party filed written argument.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported, at 2. Neither the fiscal officer nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.). A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. Here, there are no recent sales, and no party asks this board to adopt a sale price.

[6] Appellant relies on the 2015 finance appraisal submitted to the BOR, which was presented without the testimony of the appraiser or any person with personal knowledge of the transaction. This board generally rejects an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Secondly, the appraisal in this case does not opine a value as of the relevant tax-lien date. We have also generally rejected such appraisals in the past, and the Ohio Supreme Court has affirmed us. *Jakobovitch*, supra, at ¶ 12. The court has been clear "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶ 15 (quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997)).

[7] There is an exception to those two general principles when finance appraisals are at issue. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("Team Rentals"). In *Team Rentals*, the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the appraisal's proponent testified about why the appraisal was created and a party relied upon the appraisal in a business or financial transaction. Id. at ¶¶ 30-31. However, the Supreme Court clarified *Team Rentals* in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. In *Musto*, the court held this board need not credit appraisal that had been relied upon in a financial or business transaction "in the absence of direct testimony about the preparation and actual use of" the appraisal. Id. at ¶ 42; *Ciccotti v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2018-352, unreported. Here, appellant failed to provide "direct testimony about the preparation and actual use of" the finance appraisal. See *Musto*, supra. Instead, appellant relied on counsel to submit a narrative email about the refinance transaction. Statements of counsel are not a competent substitute for sworn testimony subject to cross-examination. See *The Ohio Club v. Athens Cty. Bd. of Revision* (Dec. 21, 2010), BTA No. 2008-V-1015, unreported. This board has long held it will not rely solely on statements of counsel. Id. This board is especially skeptical of assertions by counsel when it is clear counsel has no personal knowledge and is merely serving as a conduit to present "information he [or she] obtained by virtue of his [or her] representation." Id. Consequently, we do not find counsel's statements or the email about the refinance to be competent evidence about the refinance transaction. See *Lorain Cty. Savings &*

Trust Co. v. Cuyahoga Cty. Bd. of Revision (Oct. 15, 2018), BTA No. 2017-678, unreported. We also note the statement provided through counsel was not sworn and, since not presented at a hearing, not subject to cross-examination. For these reasons, we do not accept the appraisal as competent evidence of value.

[8] Even if this board did find the finance appraisal must be credited under *Team Rentals*, that case only requires this board to consider the appraisal to the extent we find it provides evidence of value for the tax year at issue. We would not find the appraisal probative for several reasons. First, appellant failed to provide "sufficient information about the credentials of the appraiser to assess" the appraiser's credibility. See *Gundling v. Hamilton Cty. Bd. of Revision* (Jan. 16, 2019), BTA No. 2018-791, unreported (citing *Team Rentals*). Second, we also lack testimony or tangible evidence showing how the subject property has changed since the appraisal was conducted. Third, we are unable to determine why the appraiser made the sales comparison adjustments he did or why he valued each respective adjustment as he did. See *Lorain Cty. Savings*, supra. Without such basic information, we cannot conclude the appraisal is competent evidence of value for tax year 2017. As a consequence, we hold appellant has failed to carry his burden.

[9] It is the decision and order of this board that for tax year 2017, the properties shall be assessed in accordance with the following values:

PARCEL NUMBER 687-30-022

TRUE VALUE

$127,800

TAXABLE VALUE

$44,730

OHIO BOARD OF TAX APPEALS

TAMMY FREER, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-804

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TAMMY FREER
Represented by:
JEFFREY P. POSNER
ATTORNEY AT LAW
3393 NORWOOD ROAD
SHAKER HTS., OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Tammy Freer appeals from a decision of the Cuyahoga County Board of Revision ("BOR"), which valued the subject property at $145,000 for tax year 2017. Ms. Freer argues the subject property should be valued at $105,000. We now consider the matter upon the notice of appeal and the statutory transcript ("S.T.") filed by the fiscal officer.

[2] The fiscal officer valued the subject property at $145,000 for tax year 2017. Ms. Freer purchased the subject property for $105,000 on December 22, 2017 in an intrafamily transfer. Ms. Freer purchased the property from her sister-in-law; however, Ms. Freer did not appear at the BOR hearing to testify about the details of the sale. Instead, counsel presented the purported details of the sale as well as unadjusted market data. He conceded the sale would ordinarily not be a facially valid sale because the transfer was between family members. However, he argued the sale should be viewed as arm's-length because the subject had been listed on the open market for several years with a listing price of $125,000, but the sister-in-law had been unable to find a buyer. He argued the failure to find a buyer at $125,000 meant $105,000 was a fair market price. He also provided unadjusted sales data, which he argued supported the $105,000 sale price. The BOR rejected those arguments, stating:

> "Counsel relied on a family transfer to support requested [value]. Board finds the family transfer was not arm's-length. Sales submitted were a partial list of sales in the market. Board

> research of sales shows Subject's fiscal officer value fits into the range of values in the neighborhood. No testimony regarding income and expense[s], or condition. No change." S.T., Ex. E.

Ms. Freer appealed to this board but did not request a hearing to submit additional evidence. No party filed written argument.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the fiscal officer nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[4] The best evidence of value is a recent, arm's-length sale. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. Transfers between related parties, like family members, are presumed "not to be arm's-length transactions unless there has been an affirmative showing that the purchase price reflected market values." *DAF Investments, LLC v. Montgomery Cty. Bd. of Revision* (Nov. 29, 2017), BTA No. 2016-2213, unreported (citing *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092). Here, we find Ms. Freer failed to present sufficient evidence to rebut the presumption the sale was not arm's-length.

[5] For one, Ms. Freer relied solely on the statements of counsel to supply facts about the sale. Statements of counsel are not a substitute for sworn testimony by someone with personal knowledge subject to cross-examination. See *The Ohio Club v. Athens Cty. Bd. of Revision* (Dec. 21, 2010), BTA No. 2008-V-1015, unreported. This board has long held it will not rely solely on statements of counsel. Id. This board is especially skeptical of assertions by counsel when it is clear counsel has no personal knowledge and is merely serving as a conduit to present "information he [or she] obtained by virtue of his [or her] representation." Id. Consequently, we do not find counsel's statements about the terms of the sale to be competent evidence of value to the extent the information cannot be verified with the documents in the record.

[6] We also find the documents in the record do not rebut the presumption that the sale was not arm's-length. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). The documents do not establish the parties acted in their own best interest despite the preexisting relationship. *DAF Investments*, supra. The documents likewise do not establish the property sat on the market for a significant period of time prior to the 2017 sale. The MLS document only shows the property was listed periodically from 2011-2013. More fundamentally, Ms. Freer did not support her argument with a qualifying appraisal. See *DAF*, supra (citing *Emerson v. Erie. Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865). Accordingly, we do not find appellant has established this was an arm's-length sale. We also find appellant's unadjusted market data does not justify a reduction. Raw sales data alone is not generally a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). Having rejected Ms. Freer's only evidence, we find she has failed to carry her burden.

[7] It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 686-14-126

TRUE VALUE

$145,000

TAXABLE VALUE

$50,750

OHIO BOARD OF TAX APPEALS

ANTHONY TALLEY, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-690 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANTHONY TALLEY
6624 RIVER BIRCH COURT
LIBERTY TOWNSHIP, OH 45044

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Anthony Talley appeals a decision of the Butler County Board of Revision ("BOR"), which valued the subject parcel at $290,000 for tax year 2017. Mr. Talley argues the subject should be valued at $268,860. We consider this matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the BOR, and the record of this board's proceeding ("H.R.").

The subject is a 0.29 acre lot improved with a residence, which Mr. Talley purchased in 2012. S.T., Ex. C at 1-2. The county auditor valued the subject at $311,900 for tax year 2017. Mr. Talley filed a decrease complaint arguing his property was overvalued compared to the auditor's valuation of other homes in the neighborhood. At the BOR hearing, he submitted printouts showing purportedly comparable sales data from various websites. He also offered a "comparison report" provided to him by his realtor. Mr. Talley noted explicitly a difference in valuation between the subject and a similar house situated at 6657 Mahogany Court. Mr. Talley argued the two are very similar but were valued quite differently by the auditor. However, Mr. Talley did not have the subject appraised. H.R. at 6.

The BOR granted a partial reduction to $290,000 using the sales comparison approach. The BOR started its appraisal by rejecting Mr. Talley's sales because nearly all were for homes in other neighborhoods. The BOR instead used two nearby homes, which sold for $309,900 and $312,000. The BOR adjusted those prices because one had a finished lower level and both had larger square footage. The BOR also considered the Mahogany Court property as requested by Mr. Talley.

However, the BOR found the Mahogany Court property distinguishable. First, the BOR noted the Mahogany Court property has a smaller residence. The Mahogany Court property also lacks a finished basement, unlike the subject. After adjustments, the BOR found a value of $290,000. Mr. Talley appealed to this board. At our hearing, Mr. Talley relied upon the same evidence he submitted to the BOR. We note his decrease complaint requested a value of $268,000, but his notice of appeal to us requested a value of $268,860.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23). We are mindful however of our duty to independently review the evidence before us. We need not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"); see also *Smith v. Erie Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-466, unreported.

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. When there is no recent sale, an appraisal may be used. See, e.g., *Musto v. Lorain Cty. Bd. of Revision*¸148 Ohio St.3d 456, 2016-Ohio-8058, ¶¶ 40-42. Mr. Talley did not obtain an appraisal. His argument relies solely on values assigned to what he considered comparable homes and some additional unadjusted market data. Raw market data is generally insufficient to justify an adjustment. We have rejected unadjusted market data in the past unless an appellant provides other competent and probative evidence in support of the adjustment. See, e.g., *Sneary v. Allen Cty. Bd. of Revision* (Aug. 4, 2017), BTA No. 2016-1449, unreported. In *Sneary*, we said, "[t]o the extent the appellant argued that the disparity between the subject property's assessed value and neighboring properties' assessed values necessitates a reduction to the subject property's value, we must reject such argument." *Id.* The Ohio Supreme Court has likewise held that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996).

Here, Mr. Talley concluded his property should be valued at $268,860 because his neighbor's similarly sized house was valued at $268,860. However, as the BOR noted, there are marked differences between the two, e.g., square footage and finished basement living space. The remaining comparable properties suffer from the same infirmity. The dots have not been connected between the subject and the proposed comparable parcels. And, "in the absence of an appraisal which analyzes such data *** the submission of raw sales information is normally considered insufficient to demonstrate value since the trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale *** may affect a valuation determination." *Western Reserve Ventures, LTD. v. Cuyahoga Cty. Bd. of Revision* (Aug. 10, 2017), BTA Nos. 2016-1351, 2016-1360, unreported (citing The Appraisal of Real Estate (14th Ed.2013)); see also *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733.

Having reviewed the evidence before us independently, we agree the BOR correctly valued the subject at the reduced value of $290,000. The BOR, on the advice of the auditor, conducted a sales comparison approach appraisal making necessary adjustments. We agree those adjustments were correct since the comparable homes and lots were larger than the subject. Specifically, we agree the BOR correctly adjusted the sales prices because of the finished lower level in one comparable. We also agree the Mahogany Court

property is distinguishable and, without an appraisal, does not warrant further adjustment from $290,000. The Mahogany Court property is notably smaller in size and lacks a finished basement.

It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER D2020-265-000-041

TRUE VALUE

$290,000

TAXABLE VALUE

$101,500

OHIO BOARD OF TAX APPEALS

MICHAEL ISREAL, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-480

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL ISREAL
1428 FAIR AVE.
COLUMBUS, OH 43205

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Michael Isreal appeals from a decision of the Franklin County Board of Revision valuing the subject property—a 0.1159 acre lot improved with a multi-family residence—at $130,000 for tax year 2017. We consider the matter upon the notice of appeal and the transcript as certified by the auditor.

The auditor valued the subject property at $130,000 for tax year 2017, and Mr. Isreal filed a complaint requesting a value of $47,500. In support, he primarily argued the residence needed repairs. He specifically cited problems with the roof, furnace, gutters, front porch, drywall, and plumbing. The school board filed a counter complaint asking the BOR to affirm the auditor's value. While the BOR held a hearing, the hearing was not recorded due to a technical oversight. We glean what we can from the BOR's notes. It appears Mr. Isreal rents the residence to tenants for either $250 or $650 per month. It also seems Mr. Isreal testified about needed repairs on the roof, furnace, gutters, porch, driveway, plumbing, foundation, water damage, windows, and gutters. The record is clear Ms. Isreal did not submit an appraisal. The BOR ultimately affirmed the auditor's value, and a BOR member orally stated Mr. Isreal failed to carry his burden by failing to submit competent and probative evidence of value. The transcript shows the BOR reviewed

unadjusted market data on at least four properties presumably to verify the auditor's value was consistent with the market. Those properties, all multi-family residences that transferred in 2017, sold for the following amounts: $367,500 (010-013113-00), $364,900 (010-005661-00), and $321,000 (010-002594-00). Mr. Isreal appealed, now requesting a value of $50,000.

Pursuant to a motion for sanctions filed by the appellee school board, we barred Mr. Isreal from introducing new evidence with this board because of his failure to comply with this board's discovery rules. The school board chose to forego the opportunity to submit new evidence with this board. After the evidentiary hearing, we permitted Mr. Isreal to submit additional written argument for good cause shown. He submitted a number of photographs and a brief argument. Again, this board will not consider the photos per its prior order barring Mr. Isreal from submitting additional evidence. See also See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996) (new evidence must be authenticated at a hearing).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

While the best evidence of value is a recent, arm's-length sale, there is no such sale in this case. The complaint states the subject was not sold in the three years before the filing date. The parcel card does show a sale in 2016, but that sale appears to have been an intrafamily transfer. No party to this appeal asks us to adopt a qualifying sale price, and we find no qualifying sale in the record.

In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). However, Mr. Isreal did not present an appraisal in this case. The only evidence he submitted is his testimony to the BOR that the subject needs certain repairs. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶ 7). Here, the impact those negative characteristics could have on value is not self-evident. Accordingly, we cannot rely on the testimonial evidence of the subject's negative characteristics to adjust the subject's value.

We are also unable to determine a change in value is warranted based on Mr. Isreal's written argument. Mr. Isreal's brief primarily cites to a media print-out concerning the Ohio Supreme Court's decision in *Terraza 8 L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. However, it is unclear how that case applies to this case factually or legally. Mr. Isreal does not allege the property was recently sold or that an appraisal rebuts a sale price, which was the legal issue in *Terraza 8*. The record is also clear the

subject is a multi-family rental unlike the 54,261 square foot fitness center at issue in *Terraza 8*. Having disposed of the only evidence and argument before us, we see no reason to depart from the auditor's original value.

For tax year 2017, we order the property to be valued in accordance with the following values:

PARCEL 010-011034-00

TRUE VALUE

$130,000

TAXABLE VALUE

$45,500

OHIO BOARD OF TAX APPEALS

JOHN STEHLI, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-396

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN STEHLI
Represented by:
BRIAN H. MEISTER
ATTORNEY AT LAW
333 BABBITT RD
SUITE 333
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner John Comfort Stehli appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing parcel 641-08-013 for tax year 2016. Appellant requested a continuance of the hearing date to secure an appraisal, and the county appellees objected to the motion. We denied the request because several continuances had already been granted and for lack of good cause. We now decide the matter on the notice of appeal and the transcript certified by the fiscal officer.

The parcel card shows appellant purchased the subject, a two-family rental, in 1983. The fiscal officer valued it at $109,800 for tax year 2016, and appellant filed a decrease complaint with an opinion of value at $51,000. At the BOR hearing, appellant argued the reduction was justified because the subject suffered from negative characteristics, the fiscal officer valued the subject higher than comparable properties nearby, unadjusted market data, and appellant's subjective opinion of value. He argued the subject suffers from a storm sewer backflow problem, roof deterioration, and general wear-and-tear. Appellant stated he owns and operates several nearby rental properties and used his knowledge of the area in determining his opinion of value. The BOR ultimately granted a partial reduction to $83,900 using comparable sales data, and appellant filed a notice of appeal with this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in

value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *Jakobovitch v. Cuyahoga Cty. Bd. of* Revision, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶12, quoting *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has repeatedly instructed this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own independent weighing of the record. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7.

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. Here, the most recent sale occurred in 1983, which we must presume is too remote. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. No party asks us to adopt the sales price, and we find no evidence the 1983 sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). Here, appellant failed to have the property appraised. Instead, he relied on the negative characteristics, unadjusted market data, testimony about the fiscal officer's valuation of other properties, and his subjective opinion of value. We address each in turn.

The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that ** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra, at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). While those negative characteristics could conceivably affect value, a party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶ 7. A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*, supra). Here, the impact those conditions could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to adjust the subject's value.

Moving on to the market sales and rent data, raw market data alone is not generally a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). Accordingly, we do not find appellant's market data evidence to be competent evidence of value.

Appellant also argued the fiscal officer valued surrounding properties differently. However, that conclusory statement is insufficient to prove the subject is overvalued. As the Ohio Supreme Court has held, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). It is possible the surrounding properties were undervalued by the fiscal officer. Id. It is equally possible the subject is simply more valuable than other nearby properties. This board is left to conjecture because appellant did not have the subject appraised. Consequently, we must, and

do, disregard the testimonial evidence about the fiscal officer's valuation of nearby properties.

Finally, appellant stated he developed his opinion of value based upon his experience owning and operating nearby rentals. However, appellant is not an appraiser. For such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). While an owner might be an expert in the subject, an owner is generally not an expert in valuation or the market. The weight to be accorded an owner's evidence is left to the sound discretion of this board. *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975). The Supreme Court has also held "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments*, supra, at 32. In this case, we do not find appellant's opinion of value is supported by tangible evidence of the property's value. Having disposed of appellant's evidence, we find he has failed to carry his burden.

We are also required to independently review the BOR's reduction. We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it"). Here, we find the BOR's reduction is not warranted because the reduction was based on raw market data, which was not tailored to the subject. We note the BOR's comparables differ significantly from one another in value per square foot. One of the comparable sales is also listed as "not valid" although it is unclear why. In the absence of any attempt to adjust the sales, or any involvement from an expert suggesting whether adjustments are needed or whether the comparables support a change in value, this board does not find the adjustment is supported by the evidence.

Consequently, we order the property to be assessed in accordance with the following values for tax year 2016:

PARCEL NUMBER 641-08-013

TRUE VALUE

$109,800

TAXABLE VALUE

$38,430

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-186
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

11619 EUCLID MONMOUTH LLC
11619 EAST 116 PLACE
CLEVELAND, OH 44106

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Cleveland Municipal School District Board of Education appeals from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of two related parcels for tax year 2016. We now consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the fiscal officer, this board's hearing record, and the BOE's appraisal. No party filed written argument.

The school board alleges that ownership of the subject, mixed-use property, was transferred via an entity transfer in 2016. It claims the subject was transferred to an LLC then the LLC's membership interest transferred to a third party. Both this board and a reviewing court have held the membership interest's transfer price may be the best evidence of real property value when "the purchase and sale agreement indicates that the transfer of membership interest was done solely to transfer title to the subject property." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634 (quoting *Orange City Sch. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 28, 2018), BTA No. 2017-127, unreported). In *Orange*, the Eighth District affirmed this board holding we could look

to the economic reality of the transaction by adopting the sale price when the entity transfer "was essentially a sale of the subject property, and not merely the sale of the personal property membership interest." However, the proponent of the transfer price is not absolved of their obligation to present evidence of the transfer sufficient for this board to make an informed determination. As discussed below, the record lacks competent proof of the transfer sufficient for this board to adopt the purported transfer price.

The fiscal officer valued the subject parcels at a combined $268,100 for tax year 2016. Appellee 11619 Euclid Monmouth LLC ("Euclid") purchased the parcels via fiduciary deed on March 2, 2016. The parcel card shows the deed was recorded on March 22, 2016. Sometime after that, the school board alleges the membership in Euclid was sold for $825,000. At the BOR hearing, the school board relied on the deed, a CoStar report, and a recorded mortgage showing Euclid mortgaged the subject for $750,000 on March 8, 2016. The BOR's oral hearing journal summary provides the following rationale for its decision:

> "Board of Education submitted evidence that the subject property was transferred on 3-22-16 to a LLC. Co-star report showing a sale of $825,000 and a Metro Scan and recorded Mortgage of $750,000 on the subject property. This Board is unable to determine the nature and amount of the transaction. No Change."

The school board appealed to this board. At this board's hearing, the school board supplied an appraisal report but did not call the appraiser or any other witness to testify.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12.

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. *Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23). As noted above, this board has held an entity transfer price can be the best evidence of value for real property tax valuation purposes. *Orange*, supra. The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). As the court held in *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412, a proponent can ordinarily meet that initial burden with a conveyance fee statement, deed, purchase agreement, or a combination thereof. Id. at ¶¶17-18. The documents must provide the reviewing tribunal with elemental information about the sale, e.g., parties, price, sale date. Id. As occurred in *Orange*, a party may also substantiate basic facts using sworn testimony at a hearing. In this case, however, we are without basic information in any form.

At the BOR, the school board relied on three documents, i.e., the deed, CoStar report, and mortgage document. The deed is not dispositive because it does not contain any information about the actual details of the membership transfer. This board has been appropriately skeptical of CoStar reports because the reports do not "indicate the source " of the information in the report. *Cleveland Mun. Schools Bd. of Edn. v.*

Cuyahoga Cty. Bd. of Revision (Aug. 2, 2018), BTA No. 2017-558, unreported. We have likewise held to "the extent the BOE relies on the CoStar report as evidence of the sale price, such report is hearsay." Id. See also *Lakewood City Sch. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 12, 2018), BTA No. 2017-499, unreported. We are likewise unable to determine the membership sale price or other details from the mortgage document. In *Beachwood City Sch. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2017-871, unreported, we found a mortgage alone is of limited value and only helpful when the basic facts of an underlying transaction are clear. Here, we find no such clarity.

At this board's hearing, the school board supplemented its evidence with a financing appraisal. However, the school board relied on the appraisal for the limited purpose of providing the purchase agreement, which was contained in the addendum. No appraiser appeared to testify to the documents, and no other witnesses were called to authenticate the purchase agreement or to discuss the transaction. We generally reject an appraisal when the appraiser fails to appear before this board or the BOR. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the

appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials or authenticate the report (including addenda). Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Equally problematic, the school board presented the purchase document through the purported appraisal report. While it is true an appraiser's job sometimes "requires reliance on hearsay evidence," a party may not sidestep its duty to properly authenticate documents by having all documents submitted through an expert. *Hilliard City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046. In the "narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts" about an underlying transaction, this board appropriately disregards the statements as hearsay. Id. at ¶ 38. Accordingly, we find the school board has not carried its burden in this case because it failed to present competent evidence of a facially valid sale. We affirm the BOR and order the fiscal officer's value retained.

For tax year 2016, we order the parcels to be valued in accordance with the following values:

PARCEL NUMBER 120-23-028

TRUE VALUE

$15,900

TAXABLE VALUE

$5,570

PARCEL NUMBER 120-23-029

TRUE VALUE

$252,200

TAXABLE VALUE

$88,270

OHIO BOARD OF TAX APPEALS

JACKSON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1894
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JACKSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

VICTORY GATE CUSTOM HOMES, LLC
Represented by:
MARY PITZO
9157 FOREST TRAIL AVENUE NW
MASSILON, OH 44647

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Jackson Local Schools Board of Education ("BOE") appeals from a decision of the Stark County Board of Revision ("BOR") valuing the subject property, a single-family residence, at $243,300 for tax year 2016. Only the BOE attended this board's hearing, and no party filed written argument. We now decide the case on the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and this board's hearing record.

[2] The BOE argues the BOR lacked jurisdiction to consider the valuation complaint because complainant Mary Pitzo failed to state an opinion of value on the complaint. As an administrative body with limited jurisdiction, "a board of revision may only perform those functions expressly authorized by statute, and the property owners must show that the BOR was authorized to consider their claims." *Shelby v. Belmont Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1938, unreported. The Ohio Supreme Court has been clear

a BOR lacks jurisdiction to consider a complaint where the complainant fails to state an opinion of value. *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, ¶ 22. While this board has recognized the opinion of value can be inferred even when line 8 of a complaint is blank, e.g., when a complainant requests valuation in accordance with a recent sale price and the sale price is on the complaint, Ms. Pitzo made no such allegation on the face of the complaint. See S.T., Ex. C, Ln. 10. Therefore, the complaint is jurisdictionally deficient, and the BOR should have dismissed it. See *Elyria City Schools Bd. of Edn. v. Lorain Cty. Bd. of Revision* (Sept. 4, 2018), BTA No. 2018-679, unreported.

[3] The BOE raises a second jurisdictional issue arguing Ms. Pitzo lacked standing because she was not the owner of the subject when she filed the complaint. She had only entered into a land contract with the owner. Accordingly, the BOE argues Ms. Pitzo never established she had standing to file the complaint under R.C. 5715.19. This board agrees. As the Supreme Court held in *Groveport-Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶ 26, standing in real property tax cases "is determined as of the commencement of the action." Even if the land contract had been completed prior to the filing of the complaint, a land contract does not transfer title. See *Hatfield v. Montgomery Cty. Bd. of Revision* (Feb. 2, 2010), BTA No. 2007-V-807, unreported. A "land contract results in a current transfer of equitable title and a subsequent transfer of legal title upon satisfaction of the contractual terms." Id. Only the "holder of legal title has standing to file a complaint under R.C. 5715.19, whereas the owner of an equitable interest in real property does not." Id. See also *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision*, 86 Ohio St.3d 181 (1999). Ms. Pitzo also failed to provide evidence she had standing on an alternative basis, e.g, a person owning other real property in the county. See R.C. 5715.19(A)(1).

[4] As a consequence of the foregoing, we reverse and remand this case to the BOR with instructions to vacate its decision and dismiss the underlying complaint, the practical effect being reinstatement of the auditor's original value.

OHIO BOARD OF TAX APPEALS

BUCKEYE COMMUNITY TWENTY ONE LP, (et. al.),	CASE NO(S). 2016-1047
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MUSKINGUM COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BUCKEYE COMMUNITY TWENTY ONE LP
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - MUSKINGUM COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, May 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property for tax year 2015. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and written argument submitted by the parties.

[2] The subject property is comprised of thirty-six parcels; thirty-five of the parcels contain a single-family home (twenty-two, three-bedroom homes and thirteen, four-bedroom homes), and one parcel contains a rental office, operated as a residential rental community. For tax year 2015, the county auditor initially assessed the subject property a collective true value of $3,614,300. The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value. At the hearing before the BOR, the property owner submitted the testimony of Sue White, the subject property's regional manager. White testified as to the subject property's age, construction, income and expenses, occupancy/vacancy rate(s), and participation in the federal government's Low-Income Housing Tax Credit program (more commonly referred to as "LIHTC"). The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

[3] This matter has been the subject of multiple merit hearings. A consolidated merit hearing was held by this

board, along with another appeal, BTA No. 2016-1043, on February 22, 2017. In that hearing, the property owner submitted the appraisal report and testimony of Richard G. Racek, Jr., who opined the value of the subject property to be $960,000 as of the tax lien date. Racek was examined, and cross-examined, about the underlying data and methodologies used in his analysis. The county appellees submitted the appraisal report and testimony of Thomas D. Sprout, who opined the value of the subject property to be $1,365,000 as of the tax lien date. Subsequent to the hearing, the parties submitted written argument to more fully assert their respective positions. While this matter was pending for decision, the property owner requested a new hearing "to present additional evidence to conform with the intervening and binding decision issued by the Supreme Court on May 11, 2017 in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, [151 Ohio St.3d 12,] 2017-Ohio-2734 ('*Network Restorations*')." See Motion To Open The Record And Hold New Hearing at 1. We granted the motion and this matter proceeded to a second consolidated merit hearing on June 26, 2018.

[4] At the second consolidated merit hearing, again along with BTA No. 2016-1043, the property owner and county appellees supplemented the record with additional evidence. In doing so, the property owner submitted the testimony of Philip J. Lechner, Jr. and Racek. Lechner testified as to his experience working for non-profit organizations and in the area of construction development, as well as his work with the developer of the subject property. Racek testified as to his second appraisal report, performed in conformity with *Network Restorations*, which concluded the subject property's value to be $1,050,000 as of the tax lien date. In addition to testifying about the underlying data and methodologies used to derive his conclusion of value, Racek testified as to the differences and similarities between his two appraisal reports submitted in this matter, i.e., at the two separate merit hearings. The county appellees cross-examined Racek about his analysis.

[5] The county appellees submitted the appraisal report and testimony of Sprout. Sprout testified as to his second appraisal report, which concluded the subject property's value to be $2,170,000 as of the tax lien date. In addition to testifying about the underlying data and methodologies used to derive his conclusion of value, Sprout testified as to the differences and similarities between his two appraisal reports submitted in this matter, i.e., at the two separate merit hearings. The property owner cross-examined Sprout about his analysis.

[6] Subsequent to the hearing, the property owner submitted written argument to more fully assert its position. Later, while this matter was pending for decision, the property owner submitted this board's decision in *Abbey Church Village (TC2) Housing Limited Partnership v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported, as additional authority for its position.

[7] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[8] In this matter, the record does not disclose a recent, arm's-length sale of the subject property; therefore, we proceed to evaluate appraisal reports and testimony from Racek and Sprout, respectively.

[9] In his appraisal report, Racek first determined that the subject property's highest and best use, "as vacant," would be for affordable housing, and "as improved," was for continued use as affordable housing. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of a large amount of economic obsolescence and that the sales comparison approach to valuing real property would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach to valuing real property. In doing so, he relied upon four comparable LIHTC properties to determine LIHTC monthly rental rates ranging from $550 to $660, depending on the adjusted median gross income (more commonly referred to as "AGMI") and number of bedrooms and layout of the homes, which he then applied to subject property's thirty-five units, to conclude total gross potential income of $245,640. To that number, he deducted 5% for vacancy and credit loss and added $1,250 of

additional income from sources other than rent, to conclude to an effective gross income of $234,608. From that number, he deducted total expenses of $122,500, to conclude to net operating income of $112,108. He capitalized the net operating income at 10.57% (which included a 1.57% tax additur to account for property taxes) to preliminarily conclude to a value of $1,060,624. He deducted $8,750 to account for appliances in each apartment unit. Based upon this analysis, he finally concluded the subject property's value to be $1,050,000 (rounded) as of January 1, 2015.

[10] In his appraisal report, Sprout first determined that the subject property's highest and best use, "as vacant," would be affordable housing through the use of tax credits, and "as improved," was for continued use for affordable housing through the use of tax credits. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because potential buyers, specifically investors, would focus on a property's income production and because it would not be financially feasible to build a similar property without the tax credits from the LIHTC program. Therefore, he developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property's features to the features of four sales of conventional market apartment complexes. After adjusting for differences with the subject property, Sprout determined the subject property's value on a per-unit basis and gross-income multiplier basis, which rendered values of $2,190,000 and $2,230,000, respectively, as of January 1, 2015. Under the income approach, he relied upon four conventional, market-rate apartments to determine a conventional market rent of $750 per month for the three-bedroom homes and $850 per month for the four-bedroom homes, which he then applied to subject property's thirty-five units, to conclude total gross potential income of $330,600. To that number, he deducted 6% for vacancy and credit loss, based upon a published market survey, and then added $1,750 of additional income from sources other than rent, to conclude to an effective gross income of $312,51. From that number, he deducted total expenses of $108,876, to conclude to net operating income of $203,638. He capitalized the net operating income at 9.23% (which included a 1.73% tax additur to account for property taxes) to preliminarily conclude to a value of $2,205,000. In his reconciliation of indicated values, Sprout gave little weight to the sales comparison approach, given the income-producing nature of the subject property, and placed the most weight upon the income approach to value, $2,205,000. He deducted $35,000 to account for appliances in each unit. Based upon this analysis, he finally concluded the subject property's value to be $2,170,000 (rounded) as of January 1, 2015.

[11] We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. This board must weigh the appraisal reports and assess their credibility. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286.

[12] We find our decision in *Abbey Church*, supra, to be instructive. There, we summed up the case law regarding the valuation of LIHTC properties as follows:

> "In short, the case law is clear that when determining the value of a property that receives government subsidies, those subsidies should be disregarded to the extent that they provide an affirmative value above 'market.' The case law also establishes that restrictions imposed pursuant to the government's police powers, as is the case with the LIHTC property in the present appeal, must be considered. See, also, R.C. 5713.03 ('The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the

fee simple estate, as if unencumbered *but subject to any effects from the exercise of police powers or from other governmental actions* ***.' (Emphasis added.)" Id. at 5.

See *Network Restorations,* supra; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 154 Ohio St.3d 146, 2018-Ohio-3254.

[13] Based upon our review, we must conclude that Racek's appraisal report and testimony best estimates the subject property's value as of the tax lien date. The primary and most important difference between the appraisers' analyses is their consideration, or lack thereof, of the restrictive covenant that limits the use of the subject property as a low-income apartment complex and its target population to people with low incomes. Racek considered the restrictive covenant and relied upon LIHTC market data (including the subject property's own experience in the LIHTC market) for his analysis. Sprout did not consider the restrictive covenant and relied upon the conventional apartment market for his analysis. As a result, we find that Sprout's appraisal report did not satisfy the requirement that LIHTC restrictions be considered when valuing real property, for property tax purposes, and, as a result, overvalued the subject property.

[14] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that Racek's appraisal report and testimony provides the best evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

Parcel Number: 10-08-71-29-092

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-093

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-094

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-095

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-096

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-097

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-057

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-058

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-059

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-060

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-061

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-062

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-063

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-064

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-065

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-066

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-067

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-068

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-069

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-070

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-071

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-072

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-073

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-074

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-075

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-076

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-077

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-078

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-079

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-080

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-081

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-082

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-083

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-084

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-085

True Value: $29,100

Taxable Value: $10,190

Parcel Number: 10-08-71-27-088

True Value: $31,500

Taxable Value: $11,030

OHIO BOARD OF TAX APPEALS

JOHN W. WHITE, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1406

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN W. WHITE
OWNER
4723 BURNHAM LN
KETTERING , OH 45429

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, May 21, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

John W. White appeals from a decision of the Montgomery County Board of Revision ("BOR") determining the value of parcel N64 03915 0001 for tax year 2017. The BOR affirmed the auditor's value of $199,860 for tax year 2017. We consider the matter upon the notice of appeal, the transcript certified by the BOR, our hearing record ("H.R."), and the updated comparative market analysis document Mr. White authenticated at our hearing.

The subject is a 0.5 acre lot improved with a residence. The auditor valued the subject at $199,860 for tax year 2017. On his complaint, Mr. White wrote: "[t]here is functional obsolescence of the property including, but limited to, windows needing replaced, unusable gas fireplace, ceiling panels need replaced in the garage, deck needs replaced." The original complaint requested a value of $165,000. However, at the BOR hearing, Mr. White adjusted his opinion of value to $135,536 on the basis of a sales comparison analysis he developed. Mr. White has extensive experience as a surveyor and some experience as a realtor; however, he testified he is not an appraiser. Mr. White's sales comparison utilizes three sales with dates ranging from December 2015 to January 2018. Mr. White obtained the sales data from the auditor's website. He also made several adjustments to control for the differences, e.g., $5,000 to adjust for the subject's basement size and $4,000 to adjust for the subject's three-car garage. Mr. White testified he quantified each adjustment by what he considered a "fair amount." However, no certified appraiser developed an appraisal of the subject.

The BOR affirmed the auditor. The BOR's speaking member noted a certified appraiser did not conduct the analysis. The speaking member also mentioned Mr. White chose properties that required substantial adjustments, which decreased the utility of the analysis. Mr. White appealed, and requested a hearing with this board. He presented us with a modified sales comparison analysis using a square footage formula he claimed was created on the advice of a BOR employee. Using that formula, he stated his updated opinion of value was $128,500. H.R. at 5. He affirmed he made adjustments he believed were "fair and reasonable" and applied "equally to the properties." H.R. at 5-6.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

The parcel record card indicates Mr. White purchased the subject in 1999 for $155,000. A recent, arm's-length sale is the best evidence of value. *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 195 N.E.2d 908 (1964). A sale that occurs more than 24 months before tax-lien date is generally not recent. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶¶ 1-2. No party to this appeal asks us to adopt the 1999 sale price, and we find no evidence in the record to suggest "the sale [continues] to be a reliable indication of value despite the passage of time." See *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Accordingly, we do not find the sale to be probative evidence of value.

The Ohio Supreme Court has held an owner's opinion of value is competent evidence of value; however, the owner's opinion must be found credible and probative. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588. While we certainly credit Mr. White's extensive experience as a surveyor and broker, this board does not find the report probative because of the adjustments made to the comparables. We first note the gross adjustments Mr. White made were substantial, one as high as 46%. The magnitude of adjustments is essential to determine how accurate an adjusted value is. The Appraisal of Real Estate (14th Ed.2008) 393. The number of adjustments is also tied to accuracy. Id. ("If a comparable transaction requires fewer adjustments than other comparable transactions and the magnitude of the adjustments is approximately the same, an appraiser may attribute greater accuracy and give more weight to the value indications obtained from the transaction with the fewest adjustments."). Mr. White's analysis contains a high number and high magnitude of adjustments--again, one comparable as high as 46%. Because of the number and magnitide of adjustments, we do not find the report to be probative because we cannot determine how accurate it is. We also recognize Mr. White acknowledged additional differences between the subject and the comparables but did not make an adjustment to those properties, e.g., wood/vinyl versus masonry exterior. Furthermore, he based the adjustment values on his "best guess" not verifiable data, and the record lacks evidence to show the sales were verified to be arm's-length transactions. In sum, we do not find the report to be probative evidence of value.

We are also unable to find an adjustment is warranted based solely on the defects alleged in the complaint. Here, the impact those characteristics could have on value is not self-evident. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra, at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might

have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. We find appellant has failed to meet his burden.

For tax year 2017, we order the property to be valued in accordance with the following values:

PARCEL N64 03915 0001

TRUE VALUE

$199,860

TAXABLE VALUE

$69,950

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1184
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

EDEN GARDENS LLC
2615 BROOKWOOD RD
COLUMBUS, OH 43209

Entered Tuesday, May 21, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Board of Education of the Columbus City Schools appeals from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel 010-103931-00 for tax year 2016. We consider this case upon the notice of appeal, the transcript certified by the auditor ("S.T."), our hearing record ("H.R."), the exhibit submitted by the school board at our hearing, and the school board's written argument.

[2] The subject's prior owner forfeited the subject to the state. The record is clear, and the school board does not dispute, the subject's condition is quite poor. The subject has accumulated a significant amount of debris and refuse. Appellee Eden Gardens LLC's ("Eden") owner testified someone abandoned a semi-truck and machinery on the subject, and he testified the refuse on the property is approximately 20 feet high and 45 to 50 feet long. He further testified there are piles of rubble, concrete, and trash. A portion of the subject is in a moderate to high-risk flood area because of its proximity to a river. As discussed further below, a central question in this case is whether the subject is landlocked. It appears a prior owner owned an adjacent parcel, which provided access to the subject but appears to be no longer available.

[3] After the subject was forfeited, the auditor notified the public that the subject would be sold in an auction format, and the auditor advertised the auction over consecutive weeks. He advertised the subject as landlocked, and at least 100 potential buyers attended the auction. Multiple bids were placed on the subject, but Eden won the auction with a winning bid of $1,750 on September 1, 2015. The certificate of sale clearly states the subject is landlocked. Since the auditor had valued the subject at $1,160,000 for tax year 2016, Eden filed a decrease complaint asking the BOR to adopt the sale price. In support, Eden's owner testified and presented the sales documents and photographs of the subject. He testified about the auction and the subject's landlocked character. Several BOR members noted their familiarity with the subject because it had been litigated in other valuation cases. One BOR member noted the subject had been owned by a company with an adjacent parcel, which made access available at that prior time. The BOR ultimately valued the subject at $1,800 based on the sale, the general condition of the subject, and its landlocked character.

[4] The school board appealed and requested a hearing. There, it offered the testimony of appraiser Tom Spout who valued the subject at $918,000 as of January 1, 2016. Mr. Sprout testified he appraised the property in 2010 for a lender who was "lending money to the previous owner of the property." He reported the previous owner told the lender an easement provided access to the subject. H.R. at 8. His report states the "previous owner indicated that a 250 foot permanent access easement exists along the eastern portion of the property with the abutting property owner. Should there be no easement or should it be limited in term, we reserve the right to revise our opinion of value. A title search is recommended. The appraisers were unable to verify this fact." He again testified at this board's hearing that a title report would be necessary to ascertain whether an easement existed. Mr. Sprout further testified he did not walk the site when he conducted the tax year 2016 appraisal. Importantly, a title search was either never completed or simply never submitted to this board. Mr. Sprout also testified the previous owner told the lender that "clean fill was dumped on the site and compacted in order to raise the site above flood hazard areas." His report notes "should it be determined by a professional engineer that the site is in an area of high flood risk or that the site has not been compacted in filled, we reserve the right to revise our opinion of value." He assumed those facts and concluded the subject is buildable in its present condition.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We note the Bedford rule is inapplicable in this case because the BOR modified the auditor's value based on a sale, rather than an appraisal. See *Dublin City Schools. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶¶ 9-11. We are mindful we must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

[6] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The parties do not challenge the recency of the auditor's sale, but only the arm's-length nature of the sale.

[7] The school board argues the auditor's sale was not arm's-length. It alleges appellant "failed to meet his burden of proving that the auction had all the components of an arm's-length transaction." BOE Brief at 1. The BOE relies heavily on *Olentangy Local Sch. Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 ("TaDa"), which addresses the auction sale presumption. The *TaDa* court held taxing authorities must "presume that an auction sale price is not a voluntary arm's-length transaction." Id. at ¶ 2. However, that presumption can be rebutted—in fact, the *TaDa* auction sale was found to be arm's-length. The *TaDa* court found that specific auction sale was arm's-length because the subject was on the open market for a meaningful period of time, testimony indicated the "auction was publicly advertised for a significant period of time, it was well attended, and there were multiple bidders for the property." Id. at ¶ 51.

The Ohio Supreme Court last analyzed auction sales, *TaDa* included, in *N. Canton City School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 292, 2018-Ohio-1 ("*LFG*"). In *LFG*, the court found an auction sale was arm's-length when the auction was well marketed, a significant number of bids were placed on the subject, and there was no preexisting relationship between a buyer and seller. Id. at ¶ 5. The Supreme Court found that evidence was sufficient to rebut the presumption and ordered the subject to be valued in accordance with the sale. Id.; see also *Hemmerich Realty LLC v. Montgomery Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2072, unreported (applying *TaDa*).

[8] When we read *TaDa* and *LFG* together we see the Supreme Court has provided at least four factors for us to consider in determining whether an auction sale is arm's-length: 1) whether, and how long, the property was on the market prior to auction; 2) whether and how the auction was advertised; 3) the number of willing and able buyers who attended the auction; 4) whether multiple bids were placed. Those factors are not exhaustive, but they are factors the Ohio Supreme Court found probative in *TaDa* and *LFG*. Those factors, of course, are to be considered alongside the standard arm's-length transaction factors applicable to every sale. Namely, a sale is arm's-length when "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989).

[9] The valuation of property "is a question of fact, the determination of which is primarily within the province of the taxing authorities" including this board. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶ 6. Having reviewed the evidence independently, we agree the BOR correctly valued the subject based on the sale, the condition of the property, and the landlocked character of the property. We first find Eden has shown the auction sale was arm's-length. The auditor advertised the subject—as landlocked—for consecutive weeks. See *TaDa*, supra. The auction was very well attended, and multiple bids were placed on the subject just like the auctions in *TaDa* and *LFG*. There is also no evidence of a preexisting relationship between the auditor and Eden different from that of any other property owner in Franklin County.

[10] We agree with the BOR that the subject's condition and landlocked character support the sale price. Again, the property appears to have largely served as a dumping ground for industrial equipment, concrete, refuse, and at least one semi-truck. Eden's owner testified the refuse on the property is approximately 20 feet high and 45 to 50 feet long. He further testified there are piles of rubble, concrete, and trash. Moreover, a portion of the subject is in a moderate to high-risk flood area because of its proximity to a river. The only evidence the school board presented to rebut those facts is Mr. Sprout's appraisal and testimony. However, Mr. Sprout relied not on his expertise as an appraiser but on hearsay statements provided by the prior owner. Those statements contradict the auditor's findings that the subject is landlocked as well as Eden's owner's expert knowledge of its own property. The Ohio Supreme Court has long recognized a property owner is an expert in their own property. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19. This board also notes that Mr. Sprout's appraisal makes clear that he assumes the subject contains an existing easement and the flood concern has been partially remedied. His report states the "previous owner indicated that a 250 foot permeant access easement exists along the eastern portion of the property with the abutting property owner. Should there be no easement or should it be limited in term, we reserve the right to revise our opinion of value. A title search is recommended. The appraisers were unable to verify this fact." He again testified at this board's hearing that a title report would be necessary to ascertain whether an easement existed. However, the school board appears to have never conducted a title search, and we cannot find years-old hearsay statements are more competent than recent auditor's findings coupled with property owner testimony. Regarding the flood issue, Mr. Sprout also testified the previous owner told the lender that "clean fill was dumped on the site and compacted in order to raise the site above flood hazard areas." His report notes "should it be determined by a professional engineer that the site is in an area of high flood risk or that the site has not been compacted in filled, we reserve the right to revise our opinion of value." The record is unclear whether those remedial steps occurred. Importantly, those are assumptions Mr. Sprout made when determining that the subject is buildable, which led him to his appraisal value. Here again, we cannot credit stale hearsay statements over the expert testimony of the owner about the current state of the subject as well as reasonable BOR findings. Mr. Sprout also testified the county engineer

would never have allowed a parcel to be landlocked, but the school board did not call a witness with actual knowledge to testify about how the engineer did or did not treat the subject.

[11] Accordingly, we find the BOR's correctly reduced the value of the subject based on the sale, condition of the property, and landlocked character of the subject. We do not find Mr. Sprout's appraisal tips the scale in the other direction because the BOR based its value on a sale, which is the best evidence of value. We also do not find Mr. Sprout's appraisal to be dispositive because it is based on several extraordinary assumptions, i.e., that the subject is landlocked and buildable, which are contrary to the evidence before this board.

[12] Accordingly, we order the property to be assessed in accordance with the following values for tax year 2016:

PARCEL NUMBER 010-1039331-00

TRUE VALUE

$1,800

TAXABLE VALUE

$630

OHIO BOARD OF TAX APPEALS

1356 E 171 LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-965

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1356 E 171 LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, May 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner 1356 E 171 LLC appeals from a decision of the Cuyahoga County Board of Revision ("BOR"), which valued the subject property at $41,600 for tax year 2017. The parties waived their appearances at this board's hearing, and both filed written argument. We now decide the case on the notice of appeal, the transcript certified by the fiscal officer, and the parties' written arguments.

The fiscal officer valued the subject property, a two-family residence, at $41,600 for tax year 2017, and appellant filed a decrease complaint requesting a value of $34,000. Appellant amended its requested value to $4,500 at the BOR hearing. The subject property was sold twice during the 2017 tax year. Then-owner Riley Cotton sold the property to ME INV LLC on October 20, 2017 for $4,500. ME INV LLC then resold the subject to appellant on November 9, 2017. ME INV LLC and appellant are related entities, and no party disputes the November sale was not arm's-length. Consequentially, appellant argued to the BOR that the October sale price should be adopted because it was the only arm's-length transaction and because it was closer in time to tax-lien date. Appellant supplied the closing statement, the settlement statement, escrow agreement, and deed for the October sale. Those documents confirm ME INV LLC purchased the subject from Mr. Cotton for $4,500. Appellant also supplied the quit claim deed transferring the subject from ME INV LLC to appellant. The BOR rejected the decrease request in holding, "[e]vidence submitted was insufficient for board to determine if either sale in 2017 was arm's-length."

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. The presumption remains even when the sale postdates the tax-lien date. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of the sale price bears "a relatively light burden and need not 'definitive[ly] show *** that no evidence controvert[s] the *** arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet the initial burden with sale documents, the deed, conveyance fee statement or a combination thereof. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 13. The opposing party must then, to succeed, rebut the presumption created by the sale by showing the sale was not recent or not arm's-length. *Lone* Star, supra,at ¶ 19.

Here, appellant presented documentary evidence of a facially valid sale in October 2017, which shifts the burden of rebuttal to any party opposing. The parties agree the November sale was not arm's-length. Even if both sales were arm's-length, the October sale would control because "[w]hen a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes." *HIN LLC v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, at paragraph one of the syllabus.

The county appellees argue appellant cannot rely on the prior sale because it was not a party to that sale. They claim that "Appellant cannot rely on *Dauch v. Erie Cty Bd of Revision,* 20l7-Ohio-1412 to meet his burden, because the documents relied on, are from a sale from a different entity, and not Appellant's sale." However, the county appellees cite no case requiring a sale proponent to have been a party to the sale. Neither *Dauch*, nor *Lunn*, add that additional hurdle. Instead, those cases are clear the only way to rebut a facially qualifying sale is by showing the sale was either too remote or not arm's-length. Id. Moreover, the record is clear there is a connection between appellant and the October sale because ME INV LLC and appellant are related entities. The county appellees also argue the sale is problematic because no person with knowledge testified about the October sale. Here again, *Lunn* is clear no such corroborating testimony is required.

The record is devoid of any rebuttal evidence. If the county appellees desired to introduce evidence to rebut the sale, they could have done so at this board's hearing. No such evidence was presented. Consequently, this board finds the unrebutted October sale is the best evidence of value.

It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 110-19-025

TRUE VALUE

$4,500

TAXABLE VALUE

$1,580

OHIO BOARD OF TAX APPEALS

10716 FLORIAN LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-964 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 10716 FLORIAN LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, May 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner 10716 Florian LLC ("Florian") appeals from a decision of the Cuyahoga County Board of Revision ("BOR"), which valued the subject property at $77,300 for tax year 2017. We now decide the case on the notice of appeal, the transcript certified by the fiscal officer, and appellant's written argument.

The subject is a single-family rental. The fiscal officer valued the subject property at $77,300 for tax year 2017, and appellant filed a decrease complaint requesting a value of $25,000 citing a July 2017 sale. The school board filed a counter complaint requesting a value of $77,310. In support of its complaint at the BOR hearing, Florian offered the purchase agreement, an agent disclosure, the settlement statement, the title insurance documents, and the deed. Florian also presented the testimony of the office manager of the property as document custodian to authenticate the documents. The BOR rejected the reduction request, stating in its oral hearing journal summary: "Evidence and testimony was insufficient to determine if the

2017 sale was arm's-length. Board could not determine if the parties were related or if the property was marketed. No change."

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. The presumption remains even when the sale postdates the tax-lien date. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of the sale price bears "a relatively light burden and need not 'definitive[ly] show *** that no evidence controvert[s] the *** arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet the initial burden with sale documents, the deed, conveyance fee statement or a combination thereof. See Lunn, supra, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 13. The opposing party must then, to succeed, rebut the presumption created by the sale by showing the sale was not recent or not arm's-length. *Lone* Star, supra, at ¶ 19.

Here, appellant presented documentary evidence of a facially valid sale, which shifts the burden of rebuttal to any party opposing the sale. However, no party presented rebuttal evidence, and no opposing party filed written argument opposing the sale. Accordingly, this board finds the sale is the best evidence of value. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 018-11-017

TRUE VALUE

$25,000

TAXABLE VALUE

$8,750

OHIO BOARD OF TAX APPEALS

JACKSON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1893
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JACKSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

JSG INVESTMENT GROUP LTD.
Represented by:
MATTHEW R. HUNT
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., LPA
4775 MUNSON STREET, N.W
P.O. BOX 36963
CANTON , OH 44735-6963

Entered Tuesday, May 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Jackson Local Schools Board of Education ("BOE") appeals a decision from the Stark County Board of Revision ("BOR") affirming the auditor's value of the subject property at $881,300 for tax year 2016. Only the BOE appeared at this board's hearing, and no party filed written argument. We now decide the case on the notice of appeal, the transcript certified by the auditor, this board's hearing record ("H.R."), and the BOE's exhibits.

While the disputed tax year is 2016, the facts of this case stem from the auditor's reappraisal for tax year 2015. The auditor valued the subject at $1,229,500 for tax year 2015, and appellee JSG Investment Group Ltd. ("JSG") filed a decrease complaint. JSG subsequently withdrew the complaint, and the auditor

maintained the $1,229,500 value for tax year 2015. However, the auditor later decreased the value for tax year 2016 to $881,300. The BOE argues the auditor was without authority to make the decease absent a change in circumstances. The BOE's case rests largely on its legal argument. It did not submit an appraisal or other evidence in support of its proposed value, i.e., the auditor's 2015 value of $1,229,500. The BOR affirmed the auditor's value finding the auditor's change was based on a field inspection by the auditor's staff. The BOR also found the BOE had submitted no evidence in support of its proposed value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

We addressed nearly identical fact patterns in *Plain Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 12, 2018), BTA No. 2017-1025, unreported, and *Canton City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 17, 2018), BTA No. 2017-1026, unreported ("*Market Avenue*"). In both cases, the BOE argued the auditor "improperly cut off the carry-forward during the interim period." *Market Avenue*, supra. We rejected that argument on the basis of *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, which held the auditor was under a continuing obligation to "revalue and assess at any time all or any part of the real estate in such county *** where the auditor finds that the true or taxable values thereof have changed." *Market Avenue*, supra, at 5 (citing R.C. 5713.01(B)). In *Market Avenue*, as in this case, the BOE argued the revaluation was improper despite the fact the BOR found the auditor changed the value on the basis of a field visit. See id. We rejected that argument in *Market Avenue* and likewise reject it in this case. The reevaluation in this case "fell within the auditor's ordinary duties of office, the presumption of regularity applies, and the auditor is presumed to have done it properly." Id. (citing *L.J. Smith v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872).

We also note the BOE had the opportunity to present additional and independent evidence of value but chose not to do so. The only other documents submitted by the BOE are the ones attached to JSG's discovery responses. Those documents, we find, do not support a change in valuation. *Market Avenue*, supra, at 8 (discussing similar documents). Even if the income and expense documents could "a reliable basis for this board to independently determine" value, the "record lacks evidence as to the appropriate capitalization rate to translate the net operating income into value." Id. Accordingly, we find the basis cited insufficient to support the claimed adjustment in value.

It is therefore the order of this board that the true and taxable values of the subject, as of January 1, 2016, were as follows:

PARCEL NUMBER 10002777

TRUE VALUE

$881,300

TAXABLE VALUE

$308,460

OHIO BOARD OF TAX APPEALS

BEACHWOOD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-663
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BEACHWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BRIARWOOD MANAGEMENT, LLC
P.O. BOX 13767
AKRON, OH 44334

Entered Tuesday, May 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 742-25-005 and 742-25-024, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and any written argument submitted by the parties.

[2] The subject property, commonly known as Pavilion Office Building, was initially assessed a collective true value of $2,453,200. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $3,275,000 purportedly based upon the price at which it transferred in February 2013. The property owner did not file a countercomplaint. Although the BOR failed to provide a copy of its hearing record, we glean from the hearing summary that a merit hearing was held on April 12, 2017. Statutory Transcript at Exhibit E. The hearing summary indicated that only counsel for the BOE appeared to submit argument and/or evidence into the record. It appears that the BOE submitted general warranty deeds, which demonstrated that 24100 Briarwood, LLC, 24100 Pavilion, LLC, and 24100 Chagrin, LLC, transferred

their respective one-third interests in the subject property to Briarwood Management LLC for $0 in February 2013; a Metroscan Property Profile about the subject property's important characteristics; an online article from REBusiness Online; a list of comparable properties; and investment offering materials related to the subject property. It also appears that the BOR conducted its own independent research, which included a printout from the county recorder's office about the subject property and exempt conveyance fee forms that memorialized the transfers from the various owners to Briarwood Management, LLC. The BOR determined the BOE's evidence to be unpersuasive. Id. After the BOR issued a written decision, which retained the subject property's initially assessed value, the BOE appealed to this board.

[3] At this board's hearing, only the BOE appeared to supplement the record with additional argument and/or evidence. In doing so, the BOE submitted the testimony of appraiser James Huber, a member of The Appraisal Institute. Huber testified that he became familiar with the subject property through his appraisal work and that he personally verified that the subject property transferred for $3,275,000 in February 2013. According to him, though the subject property transferred via a transfer of interests in the ownership entities, such transaction had all the hallmarks of an arm's-length sale. In addition to Huber's testimony, the BOE submitted a one-page excerpt from an appraisal report, valuing another property, performed by Huber, which provided details of the $3,275,000 transfer of the subject property in February 2013; an email to Huber, from another appraiser in his office, regarding the transfer of the subject property in February 2013; and a financing appraisal report that was performed near in time to the entity sale, which valued the subject property as of December 2012. Subsequent to the hearing, the BOE submitted written argument to assert that it had met its burden on appeal and, therefore, this board should increase the subject property's value to $3,275,000.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[5] The BOE argued that a recent, arm's-length sale of the subject property occurred for $3,275,000 in February 2013. It asserted that such sale occurred by way of an exempt transfer of $0 to effect an entity sale, by which the interest in the owner of the subject property, Briarwood Management, LLC, transferred. The BOE argued that this sale should be recognized as the sale of the subject property and, therefore, the subject property should be valued at $3,275,000 as of the tax lien date.

[6] The Supreme Court has held that the sale of interest in an ownership entity is not equivalent to the sale of the real property. *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998); *Gahanna-Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450 (2000). The BOE, however, argues that this board's decision in several cases, including *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-127, unreported, affirmed by 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634, supports its position. See, also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 25, 2018), BTA No. 2016-2365, unreported, appeal pending S.Ct. No. 2018-1299; *Akron City Schools Dist. Bd. Of Edn. v. Summit Cty. Bd. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported. In *Orange City*, we considered the sale of the membership of a limited-liability company that held title to real property, the company's only asset. In doing so, we relied upon testimony from a member of the ownership entity, and his authentication of documents related to the sale, to conclude that the real property should be valued consistent with the sale of the membership interest in the company. As will be discussed more fully below, the record in this matter is devoid of similarly competent, credible, and probative evidence.

[7] We find the evidence upon which the BOE relied to assert that the subject property transferred, to be

problematic as the BOE's case relies upon mounds of hearsay. See, e.g., *Dellick v. Eaton Corp.*, 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). For example, instead of presenting the testimony of someone with firsthand knowledge of the alleged sale of February 2013, the BOE presented the testimony of Huber, who lacked such knowledge. See *Orange City*, supra; *Columbus City Schools*, supra. We find the Supreme Court's decision in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, to be particularly instructive on this issue. There, the court considered the propriety of this board's decision not to consider an appraiser's statements about the facts and circumstances of a sale, topics for which she had no firsthand knowledge. In upholding our conclusion that such statements were inadmissible hearsay, the court noted that "[t]he scope of ['the BTA's hearsay determination'] applies to the narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself ***." Id. at ¶ 38. Here, it is clear that Huber acted "merely as a conduit of information" about the facts and circumstances of the alleged sale. As a result, we must find that Huber's testimony about the facts and circumstances of the alleged February 2013 sale to be hearsay and, therefore, not competent, credible, and probative, for purposes of this appeal.

[8] Likewise, we also find the financing appraisal report, performed near in time with the entity sale, to be unreliable hearsay. The BOE pointed to page 4 of the appraisal report, which provided the subject property's transfer history, and the amended purchase agreement contained in the addendum, in support of its argument that the subject property transferred for $3,275,000 in February 2013. Although in *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865, the Supreme Court has held that a hearsay appraisal report may be relied upon to determine *fair market value* to demonstrate that parties were not acting in concert to depress real property value, the BOE does not rely upon the hearsay appraisal report for that specific purpose. Because the appraiser who authored the financing appraisal report did not testify at this board's hearing, we are limited in our ability to evaluate the referenced portions of the appraisal report. As such, we find the appraisal report, in its entirety, to be unreliable hearsay. See also *Lakewood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2016), BTA No. 2016-177, unreported (finding that failure to properly submit a purchase agreement was fatal to the claim that an entity sale reflected the value of real property).

[9] For the reasons stated above, we also find that much of the evidence submitted by the BOE, at the BOR hearing, to also be unreliable hearsay. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 4, 2019), BTA No. 2018-253, unreported at 3 ("Stories appearing in newspapers, magazines, or on the Internet which are submitted by a party in an effort to prove the truth or accuracy of a claimed condition or position *** constitute hearsay ***."); *Worthington City Schools*, supra, at ¶19 ("the owner qualifies primarily as a fact witness giving information about his or her own property; usually the owner may not testify about comparable properties, because that testimony would be hearsay. See *Raymond v. Raymond*, 10th Dist. Franklin No. 11AP-363, 2011-Ohio-6173, ¶¶19-20.").

[10] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the BOE failed to satisfy the evidentiary burden on appeal. It is therefore the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

PARCEL NUMBER 742-25-005

TRUE VALUE

$2,135,900

TAXABLE VALUE

$747,570

PARCEL NUMBER 742-25-024

TRUE VALUE

$317,300

TAXABLE VALUE

$111,060

OHIO BOARD OF TAX APPEALS

JP REALTY GROUP LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2019-268, 2019-270, 2019-271

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s) - JP REALTY GROUP LLC
Represented by:
JOSEPH PESSAR
OWNER/LANDLORD
JP REALTY GROUP LLC
PO BOX 225
HACKENSACK, NJ 07601

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, May 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Upon review, these maters are hereby consolidated, sua sponte, for the purpose of consideration of the county appellees' motions. The county appellees move to dismiss these matters on the basis they were filed late with this board and were not filed with the county board of revision. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motion, the responses thereto, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The records in these matters show that appellant did not file notices of these appeals with the BOR. Appellant's response asserts it timely mailed notices of appeal to this board on February 9, 2019. However, unlike notices sent by certified mail, which under R.C. 5717.01 are deemed filed on the date *mailed* rather than *received*, notices sent by regular mail are deemed filed when they are *received*. *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4302, ¶10 ("[a] paper is filed when it is delivered to the proper official and by him received and filed."). See also *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St3d 192 (1989); *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621 (1998). Appellant mailed its notices of appeal to this board by regular mail. Such notices were therefore filed on the date they were received by this board – February 15, 2019. The record in these matters demonstrates that such date is more than thirty days from the date the board of revision mailed its decisions, and, accordingly, the notices of appeal were not timely filed under R.C. 5717.01. Moreover, appellant fails to assert that notices of the appeal were filed *ever* with the Cuyahoga County Board of Revision as is also required by R.C. 5717.01.

Upon consideration of the existing records, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

KENT CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1029, 2018-1030
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
PORTAGE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - KENT CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - PORTAGE COUNTY BOARD OF REVISION
Represented by:
ALLISON BLAKEMORE MANAYAN
ASSISTANT PROSECUTING ATTORNEY
PORTAGE COUNTY
241 SOUTH CHESTNUT STREET
RAVENNA, OH 44266

FRANKLIN CROSSING OH L.P.
Represented by:
STEVEN R. GILL
SLEGGS, DANZINGER & GILL CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

Entered Friday, May 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 17-028-00-00-017-002 and 17-028-00-00-017-001, for tax year 2017. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and a jurisdictional motion filed by the appellee property owners.

The subject property is an apartment complex that provides affordable housing for low- to moderate- income individuals. The auditor initially assessed the subject's combined total true value at $7,008,500. The BOE filed complaints with the BOR seeking increases in the value of each parcel to a combined total of $19,000,000. The property owners filed countercomplaints in support of maintaining the auditor's

values. At the BOR hearing, the BOE submitted deeds and conveyance-fee statements as evidence that the parcels transferred ownership in December 2017 for $16,500,000 and $2,500,000, respectively. The property owners moved for the BOR to dismiss the appeals as the second filings by the BOE in the same interim period, providing a copy of a complaint filed by the BOE against the value of parcel number 17-028-00-00-017-000 (the parcel from which the two subject parcels were split) for tax year 2015. Additionally, the property owners maintained that the sales were not reliable evidence of value because they were not arm's-length transactions, submitting printouts from the Secretary of State's website that reflect that the buying and selling entities all had the same statutory agent, who also signed the deeds on behalf of the seller in his capacity as managing member. The property owners also offered an article describing the investment being made in the property due to the availability of public funding. The BOE first argued that it was not barred from filing for 2017 because the parcels were split for tax year 2017 and it could not have filed on parcels that had not yet been created. The BOE further asserted that the property owners failed to rebut the presumption that the sales provided the best evidence of value as of the tax lien date. The BOR issued a decision maintaining the initially assessed valuations, which led to the present appeals. The property owners again moved for this board to dismiss the underlying complaints as the second filings in the interim period, to which the BOE did not respond. The parties waived the opportunity to present additional evidence or argument at a merit hearing before this board.

At the outset, we deny the property owners' jurisdictional motion. We acknowledge that typically under R.C. 5715.19(A)(2), a party dissatisfied with the valuation of property may file only one complaint in the [interim period]," based on the "schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year[,]" unless an exception applies. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. Although the "interim period" relevant to the instant appeal involves tax years 2015, 2016, and 2017, the first of these years having been the one in which a triennial update was completed in Portage County, the parcels were first created in 2017. Thus, we agree with the BOE that it could not have filed for an earlier year where the parcels at issue in the present appeal had not yet been created, at which point the auditor was under a duty to establish a value for those parcels. See, generally, R.C. 5713.01. Accordingly, the property owners' motion is hereby denied.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id. Once the opponent successfully rebuts the reliability of the sale, however, a second rebuttable presumption arises, which operates against the proponent of the sale, who must again show that the sale is nevertheless a reliable indication of value. *Lunn*, supra, at ¶23.

In the present appeal, it is undisputed that appellants purchased their respective subject property on December 13, 2017 for a total recorded purchase price of $19,000,000. Based on the record, however, we find that these sales do not constitute arm's-length transactions. First, the evidence shows that the parties were related, as the managing member of the seller was also the statutory agent for the buying entities. While we acknowledge that related parties "can and do effect transfers at fair market prices," such a

transaction requires an affirmative demonstration that the price reflects the subject's fair market value irrespective of the parties' relationship. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of*

Revision, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶33. No such evidence has been provided in this case. Second, based on the information before us, it appears that the transfers were done in order to obtain financing for extensive renovations that were to take place after the transfer. See *Abbey Church Village (TC2) Housing LP v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported. Accordingly, we find that the sales are not reliable evidence of value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 17-028-00-00-017-002

TRUE VALUE

$5,575,500

TAXABLE VALUE

$1,951,430

PARCEL NUMBER 17-028-00-00-017-001

TRUE VALUE

$1,433,000

TAXABLE VALUE

$501,550

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-2277
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND LINCOLN GARAGE OWNER LLC (NKA CLEVELAND LINCOLN GARAGE LLC)
Represented by:
THOMAS WYATT PALMER
ATTORNEY AT LAW
THOMPSON HINE LLP
41 SOUTH HIGH STREET,
SUITE 1700
COLUMBUS, OH 43215

Entered Friday, May 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal filed by the Cleveland Municipal Schools Board of Education ("BOE") from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value parcel number 101-05-002 for tax year 2016. We proceed to decide the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the fiscal officer, the record of the hearing before this board ("H.R."), and the parties' briefs.

The subject property, commonly known as the Lincoln Garage, is improved with a mixed use building,

including a six parking levels, first floor retail, and a sixth floor (vacant) office and fitness center. For tax year 2016, the fiscal officer valued the property at $2,785,200. The BOE filed a complaint against the valuation seeking an increase in value to $7,300,000 based on a purported sale of the property for that amount on October 26, 2016. Property owner Cleveland Lincoln Garage Owner, LLC nka Cleveland Lincoln Garage, LLC ("CLG") filed a complaint seeking to maintain the fiscal officer's value, though it later amended its complaint to request a value of $3,100,000 consistent with its appraisal evidence.

At the BOR hearing, the BOE presented evidence that the subject property transferred via an "entity sale" whereby title to the property transferred by means of transferring the membership interest in the ownership entity. Such evidence included a quitclaim deed, marketing materials, a news article, a CoStar report, and a public SEC filing by CLG's parent entity, MVP REIT II, Inc. CLG objected to the BOE's characterization of the transaction as having been structured to avoid an increase in real property value. Rather, CLG presented the testimony of Dan Huberty, president of MVP Realty Advisors, who indicated the October 2016 purchase was of the entire ongoing business concern. CLG presented the purchase and sale agreement, assignment of leases, monthly financials, operating statements, and property condition report, as evidence of the totality of the transaction. Rather than rely on the October 2016 sale, CLG advocated valuing the property based on an appraisal report and testimony by Richard G. Racek, MAI, who opined a value of the property of $3,100,000 as of January 1, 2016, using the sales comparison and income capitalization approaches to value.

The BOR ultimately rejected the BOE's argument, stating in its oral hearing journal summary: "[T]he transaction does not identify the assets involved or the value attributed to the real property or any other assets and the board finds the sale not to be an indication of value for the 2016 tax year." The BOR then adopted Mr. Racek's appraisal value, i.e., $3,100,000, as the value of the property for tax year 2016.

The BOE appealed to this board, again requesting that the value be increased to $7,300,000 based on the October 2016 transaction.

At this board's hearing, the BOE and CLG reiterated the arguments made at the BOR. In addition to those documents previously provided to the BOR, the BOE presented an appraisal of the property prepared by CBRE in connection with the October 2016 transaction, which opined a $8,400,000 value of the fee simple "as is" interest as of June 29, 2016. CLG objected to reliance on the CBRE opinion of value, noting it relied on false assumptions about the property's condition and about the lease of the sixth-floor space. For its part, CLG presented the testimony of Chris Huntley, principal of Millstone Management Group, which is currently doing renovations on the subject property. Mr. Huntley testified regarding the poor condition of the property, including failing granite facade, roof leaks, inoperable elevators, concrete failures including on a ramp in the parking area, and needed asbestos remediation. CLG presented documents, including photographs, supporting Mr. Huntley's testimony. It argued the only probative evidence of the subject property's value is Mr. Racek's appraisal report and asks that the BOR's value of $3,100,000 be maintained.

We begin our review by acknowledging that the best evidence of a property's true value in money is a recent, arm's-length sale of the property. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415; *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977). When the issue is whether a sale price establishes a property's value, the factors attending that issue must usually be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In this case, we must determine whether the transaction by which title to the subject real property transferred in October 2016 is sale for purposes of real property tax valuation. In October 2016, title in the property was transferred from Manchester Realty, LLC to Cleveland Lincoln Garage Owner, LLC by

quitclaim deed. S.T., Ex. F. All of Manchester Realty's interest in the owner were then purchased by CLG pursuant to a purchase and sale agreement for a price of $7,316,950. H.R., BOE Ex. 2. (Cleveland Lincoln Garage Owner LLC then merged into CLG in February 2017. S.T., Ex. F, Racek Report at 64.).

Ordinarily the transfer of an interest in a corporate entity is considered a sale of personal property and not indicative of real property value. *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998); *Gahanna-Jefferson Public Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450 (12000). However, this board has found the sale of all the interests in an ownership entity is indicative of real property value where the ownership entity was formed for the sole purpose of effectuating the transfer of title to the property and the entity holds no other assets. *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-127, unreported, *aff'd*, 8th Cuyahoga Dist. No. 107199, 2019-Ohio-634; *Parkland Assoc. LTD v. Cuyahoga Cty. Bd. of Revision* (June 25, 2015), BTA Nos. 2011-3893, 4060, unreported; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported. We must therefore review the documents presented to determine whether CLG was created solely to transfer title to the subject property and whether CLG holds any other assets.

Our review of the purchase and sale agreement indicates that the sale was clearly of the membership interest in Cleveland Lincoln Garage Owner, LLC, and was not only a sale of real property. The purchase agreement indicates that the property to be transferred included the subject real property, as well as non-realty assets, including intangible assets and liabilities. For example, also included in the transfer were Manchester Realty LLC's rights under several non-lease contracts. As such, we find the facts of this transfer to be akin to the transfer in *Salem Med. Arts*, supra, which the Supreme Court found to be the sale of personal property, rather than real property.

Based upon the foregoing, we find that the transfer of the property by means of CLG purchasing the membership interests in the former owner was not a sale for purposes of real property tax valuation. The burden therefore falls to the BOE to prove a value different than that adopted by the BOR, i.e., Mr. Racek's appraisal value of $3,100,000. *Dublin City Schools*, supra; *Huber Hts. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 332, 2018-Ohio-4284.

The only independent evidence of value presented by the BOE was an appraisal by CBRE of the leased fee and fee simple interests as of June 29, 2016. As CLG noted at this board's hearing and in its post-hearing briefs, the CBRE report is based on several mistaken assumptions, including that the property has no deferred maintenance. Such fact was refuted at this board's hearing through the testimony of Chris Huntley. Further, the CBRE report assumes that the sixth-floor retail space is rentable, and would be quickly leased to an undisclosed high quality credit tenant at a rental rate of $12 to $15 per square foot on a gross basis. H.R., BOE Ex. 6 at vi-vii, 54. We therefore find the CBRE report of no utility in evaluating the real property value of the subject property as of January 1, 2016. Such assumptions give the report and the data within in little utility in establishing the value of the subject property as it actually existed on tax lien date.

We find no error in Mr. Racek's report that would render it not probative of the subject property's value on tax lien date. See *Huber Hts.*, supra, at ¶21 (evidence relied upon by BOR need only be competent and at least minimally plausible). Accordingly, we find the BOE has failed to meet its burden to prove a value different than that determined by the BOR. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$3,100,000

TAXABLE VALUE

$1,085,000

OHIO BOARD OF TAX APPEALS

JACKSON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1895
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JACKSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

FIDC XVII, LLC
Represented by:
MATTHEW R. HUNT
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., LPA
4775 MUNSON STREET, N.W
P.O. BOX 36963
CANTON , OH 44735-6963

Entered Friday, May 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Jackson Local School District Board of Education ("BOE") appeals from a decision of the subject property at $2,825,000 for tax year 2016. Both the BOE and appellee FIDC XVII, LLC ("FIDC") filed written argument. We now decide the case on the notice of appeal, the transcript certified by the auditor ("S.T."), and the parties' written argument.

[2] FIDC purchased the subject, a Jared Jewelers and dentist office, in August 2012 for $4,600,000 in an arm's-length transaction. The BOE filed an increase complaint for tax year 2012 citing the sale, and the BOR adopted the sale price. FIDC filed a complaint for tax year 2014 asking the BOR to adopt a value of $2,750,000 based on the appraisal of Charles Snyder, MAI. The BOR granted the reduction, but this board

reversed, finding the sale was the best evidence of value for tax year 2014. *Jackson Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Aug. 8, 2016), BTA No. 2015-1945, unreported. 2015 was an update year for Stark County, and the auditor valued the subject at $4,600,000. FIDC filed a decrease complaint for 2016 asking for a valuation of $2,825,000 based on a new appraisal by Mr. Snyder. The BOR ultimately valued the subject at $2,825,000 "based on the appraisal and the appraiser's testimony." The school board appealed to this board.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, the most recent sale of the property was the August 2012 sale, which we presume is not recent. We also find no party has rehabilitated the sale's recency by showing the price continues "to be a reliable indication of value despite the passage of time." Id.

[4] Because the BOR reduced the value and because the BOE is the appellant, we must address the burden of proof under the "*Bedford* rule" and cases interpreting that rule. See *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 4, 2018), BTA No. 2017-2274, unreported. The *Bedford* rule applies when: 1) the property owner filed the complaint or counter complaint; 2) the board of revision ordered a reduction valuation based on competent evidence offered by the property owner; 3) the board of education appeals to this board; 4) the board of revision's determination is based on appraisal evidence rather than a sale. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025. Assuming the owner's evidence is competent, specific, and plausible, the board of revision's reduction "eclipse[s] the auditor's original valuation." *Worthington City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 347, 2014-Ohio-3620. As a result, an appealing board of education must come forward with affirmative evidence of value; it cannot default to the auditor's value. See id. However, "if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it." Id.

[5] Here, the burden shifts to the school board to present affirmative evidence of value because the *Bedford* rule applies. The property owner, FIDC, filed the original complaint, the school board is the appealing party, and the reduction was based on appraisal evidence rather than a sale. The BOR's reduction was based on competent, specific, and plausible appraisal evidence. Mr. Snyder developed both a sales comparison and an income approach to value using market data. He analyzed the national and regional markets. He used comparable property sales, two of which occurred less than one year from tax-lien date. Mr. Snyder adjusted for age, building size, location, and quality of construction. This board also notes the gross magnitude of adjustments was generally low. Mr. Snyder also utilized market data to develop an income approach, and he was subject to cross-examination by the BOE.

[6] Instead of presenting positive evidence of a new proposed value, the BOE's brief is almost entirely devoted to a critique of Mr. Snyder's appraisal. To be sure, a BOE can always challenge an opponent's appraisal, but, under the Bedford rule, the BOE cannot prevail unless it presents actual evidence of value. Because the BOE presented no such evidence, it has failed to meet its burden. This board also notes the BOE spends much of its brief arguing FIDC did not provide certain documents during discovery. That issue should have been raised during discovery. See Ohio Adm. Code 5715-1-12.

[7] It is the decision and order of this board that for tax year 2016, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 1615587

TRUE VALUE

$2,825,000

TAXABLE VALUE

$988,750

OHIO BOARD OF TAX APPEALS

JONES HOLDINGS LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-2028

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JONES HOLDINGS LLC
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

BOARD OF EDUCATION OF THE HUBER HEIGHTS CITY SCHOOL DISTRICT
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, June 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered upon the appellee board of education's ("BOE") motion to remand this matter to the board of revision ("BOR") with instructions to dismiss the underlying complaint for lack of jurisdiction. Neither the property owner nor the county appellees responded to the motion. See Ohio Adm. Code 5717-1-13(B). We consider this matter upon the motion and the notice of appeal. It should also be noted that, because of irregularities at the BOR, we must consider the record of BTA No. 2018-2029.

[2] A review of the records demonstrates the following. On or about March 8, 2018, a complaint was filed with the BOR, which requested a reduction to the value of parcel number P70 02007 0026 for tax year 2017. The complaint listed "Jones Holdings, LLC" as the property owner, "agent" as the complainant if not

owner, and "Doris McCall-Hammonds" as the complainant's agent. The complaint was signed by "Doris McCall-Hammonds," whose title was noted as "Agent." This complaint was assigned BOR No. 1322. On or about March 28, 2018, the BOE filed a complaint with the BOR, which requested an increase to the value of the same parcel for tax year 2017. This complaint was assigned BOR No. 5147. For some unknown reason, the complaints were not consolidated and proceeded on separate tracks. As such, it appears that the BOR convened two separate hearings on the valuation of the same parcel for the same tax year. Though the BOR failed to satisfy its statutory duty to provide this board a record of the BOR hearing for BOR No. 1322, apparent from the BOR hearing notes, the BOR held a hearing on May 29, 2018, at which time only the property owner appeared. On June 28, 2018, based upon the evidence presented, the BOR issued a decision that reduced the subject property's value from $116,160 to $110,130. This decision is the subject of this appeal (BTA No. 2018-2028).

[3] On August 28, 2018, the BOR held a hearing on BOR No. 5147, at which time only the BOE appeared. As the hearing commenced, one of BOR members noted that the BOR had convened a hearing on BOR No. 1322 and had issued a decision that changed the subject property's value. Later in the hearing, the same BOR member noted that the BOR was awaiting directions on how to proceed given the competing complaints. In addition to submitting evidence of the subject property's value, the BOE also argued that the BOR lacked jurisdiction to consider the complaint filed in BOR No. 1322 because it was filed by a person unauthorized to file such complaint on behalf of the property owner. On October 29, 2018, based upon the evidence presented, the BOR issued a decision that increased the subject property's value from $116,160 to $144,900. That decision is the subject of BTA No. 2018-2029.

[4] In its motion, the BOE argues that Ms. McCall-Hammonds engaged in the unauthorized practice of law by filing the complaint in BOR No. 1322, and that the complaint therefore failed to properly invoke the jurisdiction of the BOR. The Supreme Court has recently reaffirmed that "if someone other than the property owner prepares and files the complaint on behalf of the owner, that person must be an attorney or authorized by law to make such filing." *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244, ¶11. R.C. 5715.19(A) specifies those non-attorney agents who may file on behalf of an owner, including spouses, appraisers, real estate brokers, accountants, and corporate officers. Non-attorney agents, such as Ms. McCall-Hammonds, are not authorized to file valuation complaints on behalf of another, and engage in the unauthorized practice of law when they do so. *Greenway*, supra, at ¶17. A complaint filed by a non-attorney agent not authorized by law fails to invoke the board of revision's jurisdiction. *Sharon Village, Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997).

[5] Based upon the foregoing, we find that the underlying complaint in BOR No. 1322 failed to properly invoke the jurisdiction of the BOR. Accordingly, this matter is remanded to the Montgomery County Board of Revision with instructions to vacate its decision in BOR No. 1322, and to dismiss the underlying complaint for BOR No. 1322. It is important to note that the issue of the subject property's value for tax year 2017, emanating from BOR No. 5147, remains pending before this board as BTA No. 2018-2029.

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-895
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

ALUMNI COUNCIL OF THE COUNTRY CLUB OF OTTERBEIN COLLEGE BOARD OF TRUSTEES
4308 LAWNVIEW DR.
COLUMBUS, OH 43214

Entered Monday, June 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 080-000184-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is improved with a single-family residence that has been altered for use by multiple tenants and functions as student housing for members of a fraternity at Otterbein University. The auditor initially assessed the subject's total true value at $494,000. The appellee property owner filed a complaint with the BOR seeking a reduction in value to $366,300. The BOE filed a countercomplaint in support of retaining the auditor's value. At the BOR hearing, Drew Laughlin, treasurer of the fraternity's alumni association and property manager for the subject, described the property and explained the basis for the requested reduction. Laughlin described the subject property's condition, noting that it needed expensive

repairs, such as a new boiler system, and provided a letter and photographs detailing the necessary work. Laughlin also confirmed that the property record card was incorrect when it referenced two full bathrooms rather than one. The BOE did not present any independent evidence of value or contest the veracity or utility of the testimony in any way. The BOR issued a decision reducing the initially assessed valuation to $395,200 based on a change to the property's condition from "good" to "poor" and an adjustment to reflect the proper number of bathrooms. From this decision, the BOE filed the present appeal.

[3] This board convened a hearing, at which the BOE argued that there was no evidence to negate the auditor's value and record lacked evidence of value that would allow this board to independently determine value. As such, the BOE claimed that the auditor's value is presumed to be correct and should be reinstated. Laughlin maintained that though it was not reduced to the amount requested, the BOR's value was more in line with the subject's true value based on the condition of the subject. Laughlin also testified about the limitations imposed on the property by Otterbein, which restricts its tenants to current students.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. "Under the *Bedford* rule as explained in *Northpointe*, as long as the evidence of value that the owner presented to the board of revision was competent and at least minimally plausible, the board of education may not invoke the auditor's original valuation as a default—with the result that it is not enough for the board of education at the BTA to find fault with the evidence that the owner presented before the board of revision." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶7, referencing *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio- 5237 and *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620 ("*Northpointe*").

[5] In the present appeal, we disagree with the BOE that the record contains no evidence to negate the auditor's value. At the BOR hearing, Laughlin provided unrefuted evidence that the information utilized by the auditor in the initial valuation was incorrect, i.e., that there were fewer bathrooms and that the property was in inferior condition than the property record card reflected. The BOE did not challenge this testimony or make any arguments against the BOR's reliance thereon. The BOR, therefore, rightfully corrected the data, which resulted in a reduced value. Thus, on appeal, the BOE was tasked with providing new evidence to support the value it sought but failed to meet this burden. Accordingly, we find that the record shows that BOR's value properly considers accurate size and dwelling characteristics and best reflects the value of the subject property.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$395,200

TAXABLE VALUE

$138,320

OHIO BOARD OF TAX APPEALS

BRIGHTSTONE MUIRWOOD, LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1878 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRIGHTSTONE MUIRWOOD, LLC
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, June 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 530-166437-00 and 530-201677-00, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and record of this board's hearing.

[2] The subject property, a 164-unit apartment complex, was initially assessed at $7,200,000. The appellee board of education ("BOE") filed a complaint with the BOR, which requested that the subject property be revalued to reflect the $8,870,000 price at which it purportedly transferred in February 2017. The property owner filed a countercomplaint, which objected to the request.

[3] At the hearing before the BOR, both the BOE and property owner appeared. In its presentation, the BOE

submitted sale documents, which demonstrated the $8,870,000 transfer of the subject property from TEG Muirwood Village, LLC to the property owner in February 2017. Based upon the documents, the BOE requested that the subject property be revalued consistent with the subject sale. The property owner did not make a presentation. The BOR held a consolidated decision hearing that included the subject property and other properties, which are not the subject of this appeal. In doing so, the BOR voted to accept the subject sale as the best indication of value and subsequently issued a written decision to that effect. This appeal ensued.

[4] At the hearing before this board, both parties appeared to supplement the record with argument and/or evidence. In its presentation, the property owner submitted the appraisal report and testimony of appraiser Christian M. Smith, who opined the value of the subject property to be $8,700,000, less $180,000 for furniture, fixtures, and equipment ("FF&E"), as of January 1, 2016. Smith was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. Based upon Smith's appraisal report and testimony, the property owner requested that the subject property be revalued at $8,520,000, in part, to account for personal property alleged to have been included in the subject sale. In its presentation, the BOE submitted additional documents related to the subject sale, i.e., purchase agreement, an amendment to the purchase agreement, settlement statement, and financing appraisal report performed contemporaneous with the subject sale. Based upon those documents, the BOE argued that the property owner had failed to demonstrate that the parties to the subject sale had allocated any portion of the sale price to items other than realty.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[6] We begin our analysis with the February 2017 sale. Upon presentation of the sale documents, the BOE created a rebuttable presumption that the property owner's $8,870,000 purchase of the subject property was the best indication of its fee simple value as of January 1, 2016, see *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶¶32-34, and the property owner does not dispute the minimal details of the subject sale, see *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The burden then shifted to the property owner to demonstrate that the subject sale did not reflect the subject property's value on the tax lien date. The property owner attempted to satisfy this burden through the appraisal report and testimony of Smith.

[7] In his appraisal report, Smith developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property's features to the features of four other apartment complexes, located throughout Franklin County, Ohio, that sold between March 2015 and September 2016. After adjusting the comparable properties for differences with the subject property, i.e., conditions of sale, unit size, and project amenities, Smith estimated an indicated value between $8,200,000 and $9,020,000. He finally concluded the subject property's value to be $8,600,000 under the sales comparison approach. Under the income approach to value, Smith surveyed the market to determine market rental rates for the subject property's various one-bedroom and two-bedroom units. In doing so, he concluded to a potential rental income of $1,316,256. After determining that no deduction should be made to reflect "loss to lease" or rental concessions, he proceeded to determine vacancy, 4.50%, and collection loss, 1.50%, to derive net rental income of $1,237,281, to which he added $220,000 to reflect additional sources of income, before he concluded to an effective gross income of $1,457,281. From that number, he deducted $600,042 of expenses, for items such as property insurance, utilities, and reserves for replacement, to derive net operating income of $857,239, which he capitalized at 9.85%, inclusive of a tax additur. He finally concluded the subject property's value to be $8,700,000 under the income approach. He reconciled the indicated values,

placing most weight on the income approach to value, to finally conclude the subject property's value to be $8,700,000 as of the January 1, 2016. He continued his analysis to determine the depreciated value of the kitchen appliances contained within the apartment units to be $180,000.

[8] As we review Smith's appraisal report and testimony, we note that he lacked firsthand knowledge of the subject sale and did not consider it in his analysis, i.e., as a comparable property under the sales comparison approach. Furthermore, his indicated range of value under the sales comparison approach supports the $8,870,000 sale price of February 2017. He concluded to a range in value between $50,000 and $55,000 per apartment unit or between $8,200,000 and $9,020,000. The subject property sold for approximately $54,085 per apartment unit i.e., $8,870,000/164 apartment units. Furthermore, he did not adjust the comparable sales for changes in market conditions, which demonstrates that the subject sale need not be rejected because market conditions were different on the tax lien date. Moreover, we find nothing in Smith's income approach, and its various factors, that necessitates rejection of the subject sale.

[9] The property owner contends that a portion of the subject sale price should be deducted for items other than realty. The value of personal property, when included in a sale of realty, may properly be deducted from the sale price of the realty. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* 128 Ohio St.3d 565, 2011-Ohio-2258. As the party advocating for a reduction below the full sale price due to an allocation to other assets, the property owner bears the burden of showing the propriety of such action and must provide "corroborating indicia" of the appropriate allocation. *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶17. In *Hilliard City Schools Bd. of Edn*., supra, the court weighed evidence regarding the value of the personalty sold in a sale of realty. In doing so, the court relied upon the value placed upon FF&E in an appraisal report performed contemporaneous with the sale as "corroborating indicia" of such value. In this matter, the appraisal report performed contemporaneous with the subject sale neither identifies nor provides any value to the FF&E claimed to be a part of such sale. In fact, none of the sale documents, i.e., purchase agreement, an amendment to the purchase agreement, settlement statement, reference the FF&E. Because Smith had no firsthand knowledge of the sale, his appraisal report and testimony were not "corroborating indicia" of the value of the FF&E claimed to be part of the subject sale. See *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, ¶25 ("[T]he burden lay on FirstCal in this case, as the opponent of using the reported sale price, to demonstrate why it did not properly reflect the aggregate true value of the parcels. FirstCal, as purchaser of the property, performed the allocation to Franklin County in the first instance, and FirstCal possesses the information necessary to demonstrate its proper relationship to the value of the Franklin County parcels."). We therefore find insufficient evidence to support an allocation of the $8,870,000 sale price to personal property.

[10] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that not only did the property owner fail to rebut the presumptions accorded to the subject property's $8,870,000 transfer in February 2017, but the property owner also failed to provide "corroborating indicia" that the subject sale price should be reduced to reflect the value of FF&E. It is therefore the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER 530-166437-00

TRUE VALUE

$7,486,500

TAXABLE VALUE

$2,620,280

PARCEL NUMBER 530-201677-00

TRUE VALUE

$1,383,500

TAXABLE VALUE

$484,230

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1111
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

ADVANCED STEAM TECHNOLOGIES LTD.
P. O. BOX 2290
AKRON, OH 44309

Entered Tuesday, June 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's value of the subject property for tax year 2017. The BOE requested a hearing with this board but then waived its appearance at that hearing. No party filed written argument. We decide the appeal on the notice of appeal and the statutory transcript ("S.T.") certified by the fiscal officer.

[2] The fiscal officer valued the subject property at $927,230 for tax year 2017, and the BOE filed an increase complaint with an opinion of value of $990,000 per a March 23, 2015 sale. In support the BOE supplied the conveyance fee statement, which shows the property sold in March 2015 for $990,000. The statement indicates no portion of the purchase price was attributable to non-realty. The BOE also presented the deed, which confirms the sale occurred in March 2015. The parcel record card likewise confirms the sale date and price. The property owner, appellee Advanced Steam Technologies LTD ("Advanced Steam"), did not

appear at the BOR hearing or otherwise participate in the BOR proceeding. The BOR denied the increase stating it found a lack of sufficient evidence to verify the details of the sale.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

[4] In this case, the BOE met its initial burden of proving a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119,2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to create presumption). Those documents confirm Advanced Steam purchased the property in March 2015 for $990,000. The sale is presumed recent because it occurred within 24 months of tax-lien date. Accordingly, the burden shifts to any opponent of the sale price to rebut. However, no party has submitted evidence in rebuttal or even participated in this proceeding or the BOR proceeding. Accordingly, we find the presumption created by the sale has not been rebutted.

[5] It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 67-24107

TRUE VALUE

$990,000

TAXABLE VALUE

$346,500

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1094
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

480 WHITE POND GROUP, LTD
1700 W. MARKET ST.
SUITE 310
AKRON, OH 44313

Entered Tuesday, June 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's value of the subject property for tax year 2017. The BOE requested a hearing with this board but then waived its appearance at that hearing. No party filed written argument. We decide the appeal on the notice of appeal and the statutory transcript ("S.T.") certified by the fiscal officer.

[2] The fiscal officer valued the subject property, an apartment building, at $537,130 for tax year 2017, and the BOE filed an increase complaint with an opinion of value of $565,000 per a March 30, 2015 sale. In support the BOE supplied the conveyance fee statement, which shows the property sold in March 2015 for $565,000. The statement indicates no portion of the purchase price was attributable to non-realty. The BOE also presented the deed, which confirms the sale occurred in March 2015. The parcel record card likewise

confirms the sale date and price. The property owner, appellee 480 White Pond Group LTD ("White Pond"), did not appear at the BOR hearing or otherwise participate in the BOR proceeding. The BOR denied the increase stating it found a lack of sufficient information to verify the details of the sale.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

[4] In this case, the BOE met its initial burden of proving a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to present facially valid sale). Those documents confirm White Pond purchased the property in March 2015 for $565,000. The sale is presumed recent because it occurred within 24 months of tax-lien date. Accordingly, the burden shifts to any opponent of the sale price to rebut. However, no party has submitted evidence in rebuttal or even participated in this proceeding or the BOR proceeding. Accordingly, we find the presumption created by the sale has not been rebutted.

[5] It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 68-20621

TRUE VALUE

$565,000

TAXABLE VALUE

$197,750

OHIO BOARD OF TAX APPEALS

HORIZON TRUST COMPANY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1883 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HORIZON TRUST COMPANY
3459 MAURICIA AVE.
SANTA CLARA, CA 95051

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, June 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals to this board from a decision of the Cuyahoga County Board of Revision ("BOR") determining a value of 130-15-103 for tax year 2017. Although a hearing before this board was requested, no one appeared on behalf of the property owner. In accordance with this board's February 26, 2019 order, we proceed to consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified by the fiscal officer.

The subject property is improved with a two-family dwelling. For tax year 2017, the fiscal officer valued the property at $51,700. The property owner filed a complaint against the valuation seeking a decrease to $33,000. At the BOR hearing, counsel appeared on behalf of the owner and offered the appraisal report and testimony of Donald H. Durrah, certified general appraiser, who opined a value of $25,000 as of tax lien date. Mr. Durrah explained that the property had sold several times prior to the current owner's purchase of the property in November 2015 for $70,183. The prior sales were for $50,000 in October 2015, and $15,000 in July 2015. Mr. Durrah testified that he believed the property had been the subject of some sort of flipping scheme to artificially increase the value of the property. He indicated that, although the owner had communicated to him that they believed the property to be in good condition, the property suffered from substantial condition issues, including damaged sidewalk and driveway, damaged and broken gutters, broken A/C, broken steps, and falling plumbing. However, Mr. Durrah found the property to be in typical condition for the neighborhood.

In his sales comparison approach, he compared the subject property to six comparables sales from within 0.25 miles, including five on the same street as the subject. The sales occurred between December 2016 and

December 2017 for unadjusted prices of $12,200 to $34,200. Mr. Durrah made few adjustments to the sales, given the substantial similarity to the subject property. Using the sales comparables, he opined a value of $25,000. While he placed the most consideration on the sales comparison approach, he also conducted an income approach, pursuant to which he opined a value of $24,000.

The BOR ultimately found no change in value was warranted. In its oral hearing journal summary, the BOR stated:

> "Board reviewed appraisal and heard testimony from appraiser that the owners purchased the property on 11/15/2018 for $70,750 after seeing pictures of it. Date of inspection by the appraiser was 10/4/2018. The appraiser testified that he did not see the property when it was purchased, although he assumed it was in the same condition at the time of purchase because that condition does not happen overnight but over a period of time. The appraiser also related what the owner told him regarding the loss of occupancy at the property shortly after the time of purchase in connection with a casualty and on-going vacancy until recently. [N]o corroborating evidence was provided to support that testimony. The Board also questions the credibility of the sale comparables used in the appraisal as they [are] over 1 year removed from the date of valuation. Board finds appraisal evidence not probative of the requested value. Failure to meet burden. No change." S.T., Ex. E.

On appeal to this board, appellant requests a decrease in value to $25,000 based on Mr. Durrah's appraisal.

As the appellant in this matter, the burden is on the owner "to demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. At the outset, we acknowledge that the best evidence of property's value is a recent, arm's-length sale of the property. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. Here, appellant purchased the property approximately thirteen months prior to tax lien date. While the record suggests the sale was conducted at arm's-length, the BOR apparently rejected reliance on the sale. Mr. Durrah testified regarding the information relayed to him by the owner about its understanding of the condition of the property being much better than reality. He also testified regarding the prior sales of the property, opining that such sales may have been part of a flipping scheme to increase the property's value for subsequent sale. Given the testimony, the subject's sale history, and the data within Mr. Durrah's report indicating sales occurring in the subject's neighborhood for half of the appellant's November 2015 purchase price, we find the sale is not the best evidence of the subject property's value on tax lien date.

We therefore turn to the appraisal evidence. The BOR faulted Mr. Durrah for relying on sales that post-dated tax lien date; however, there is no indication in the record that the subject's market changed between tax lien date and the dates of the post-tax-lien-date sales upon which Mr. Durrah relied, i.e., March 2017, April 2017, October 2017, and December 2017. Further, we note that Mr. Durrah did utilize one comparable sale that predated tax lien date by a mere ten days (comparable sale #4). Comparable sale #4 sold for $32,000 on December 21, 2016, is located 0.23 miles from the subject property, and differed from the subject property only slightly in condition. The substantial similarity of the remaining comparable sales and the subject property is striking, and indicates such sales are probative of the subject property's value. The BOR also faulted Mr. Durrah for not having viewed the property until October 2018; however, there is no indication that the condition of the property was substantially different on tax lien date. Upon our review of Mr. Durrah's appraisal report, we find it credible, competent, and probative of value as of tax lien date.

Based upon the foregoing, it is the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as opined by Mr. Durrah, as follows:

TRUE VALUE

$25,000

TAXABLE VALUE

$8,750

OHIO BOARD OF TAX APPEALS

KEITH CHACKSFIELD, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1988

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KEITH CHACKSFIELD
9615 LANSFORD DRIVE
BLUE ASH, OH 45242

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, June 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 092-0003-0278, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $106,790. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $75,000 based upon an appraisal report. At the BOR hearing on the matter, the property owner submitted an appraisal report performed by Michael Yeazel, which opined the value of the subject property to be $75,000 as of March 15, 2018. The property owner testified as to the condition of the subject property, i.e., home needs new roof and lacks central air conditioning. Susan Spoon, an appraiser from the county auditor's office also appeared at the hearing. She testified consistent with her written appraisal report, which opined the value of the subject property to be $145,000 as of January 1, 2017 and noted her disagreement with Yeazel's selection of comparable properties. However, after clarifying the condition and layout of the home, and the extent of upgrades, Spoon testified that she believed the subject property to be worth $140,000. The property owner vehemently disagreed with Spoon's analysis. Two members of the BOR voted to change the subject property's condition from "average" to "fair" but voted to maintain the subject property's value at $106,790; one member of the BOR voted against such action. As a result, the BOR issued a decision that retained the subject property's value and this appeal ensued. The parties declined the opportunity to submit additional evidence at a hearing before this board. Instead, they submitted written argument to assert the strengths of their respective positions and the weaknesses of the opposing party's positions.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* , 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' appraisal evidence.

Both Yeazel and Spoon solely developed the sales comparison approach to value. Yeazel compared the subject property's features to the features of at least three alleged comparable properties. Both appraisers adjusted the alleged comparable properties for differences with the subject property, i.e., site size, quality of construction, and gross living area. Yeazel concluded the subject property's value to be $75,000 as of March 15, 2018; Spoon concluded the subject property's value to be $145,000 as of January 1, 2017.

Where, as here, a party relies upon an appraiser's opinion of value, this board may accept all, part, or none of the appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision*, 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision*, 85 Ohio St.3d 609 (1999). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

Upon review, we find neither of the appraisal reports to be competent, credible, and probative evidence of the subject property's value. We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

We begin our critique with Yeazel's appraisal report, which we do not find to be competent, credible, or probative for two primary reasons. First, he did not testify at the hearing before the BOR (or at a hearing before this board) to authenticate the appraisal report, to testify regarding his professional credentials and the underlying data and methodologies used in deriving his value conclusion, or to be questioned by members of the BOR (or this board's attorney examiner). For example, although the subject property was an income-producing property, Yeazel failed to develop the income approach to value. See R.C. 5715.01 ("in determining the true value of lands or improvements thereon for tax purposes *** the income capacity of the property, if any *** shall be used."). See also *Lutheran Social Servs. of Cent. Ohio Village Hous., Inc. v. Franklin Cty. Bd. of Revision* (Apr. 3, 2018), BTA Nos. 2012-386 et seq., unreported at 4 ("we *** find the income approach to value to be the most appropriate and reliable methodology to utilize when valuing income-producing property."). Because he did not testify before the BOR (or before this board), the record is devoid of any explanation for this important deficiency. As a result, we must conclude that Yeazel's appraisal report does not provide a full analysis of the subject property's value.

Second, Yeazel valued the subject property as of March 15, 2018, more than fourteen months after the tax lien date, January 1, 2017. As has been repeatedly stated by both the Supreme Court and this board, while we may "'consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date[,]' *** [we] must base [our] decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revisio*n 75 Ohio St.3d 552, 554-555 (1996). See also *Freshwater v. Belmont Cty. Bd. of Revision*, 80

Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

We acknowledge that the court has held that even an appraisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data contained in such report. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25. In this case, however, given the deficiencies with the appraisal report as noted above, we find that the appraisal does not contain the same level of reliability as in *Copley-Fairlawn*. The record lacks sufficient information about Yeazel's credentials and qualifications such that we could have confidence in his analysis and conclusion of the subject property's value. It is also important to note that, unlike in *Team Rentals*, there is no indication that anyone relied upon the appraisal report to determine the subject property's value. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42, (distinguishing *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal).

We proceed to critique Spoon's appraisal report, which we do not find competent, credible, or probative for one primary reason. Spoon's appraisal report noted that she did not inspect the subject property or the alleged comparable properties. As the BOR hearing record indicated, Spoon was unclear about the layout of the home, i.e., whether the third floor was finished, and the extent of past rehabilitation of the home, i.e., whether the property owner made major or minor improvements. We have previously commented upon the importance of an appraiser's familiarity with the property being appraised and those relied upon to extrapolate value. See, e.g., *Monton v. Hamilton Cty. Bd. of Revision* (Dec. 5, 2018), BTA No. 2018-603, unreported at 3 ("It is undisputed that Spoon did not inspect the subject property and, as a result, we question whether her analysis is truly supported with data reflective of the market in which the subject property would have competed on the tax lien date."). As a result of this deficiency, we do not find Spoon's appraisal report to be persuasive. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St. 3d 548, 2018-Ohio-919. We also note that the BOR rejected Spoon's appraisal report as the best indication of the subject property's value.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we are constrained to conclude that the property owner failed to provide competent and probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

TRUE VALUE

$106,790

TAXABLE VALUE

$37,380

OHIO BOARD OF TAX APPEALS

HESS OHIO DEVELOPMENTS LLC, (et. al.),

Appellant(s),

vs.

BELMONT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2673, 2016-2674, 2016-2675, 2016-2676, 2016-2677, 2016-2678, 2016-2679, 2016-2680, 2016-2681, 2016-2682, 2016-2690, 2016-2691, 2016-2692, 2016-2693, 2016-2694, 2016-2695, 2016-2697, 2016-2698, 2016-2700, 2017-1803, 2017-1804, 2017-1806, 2017-1807, 2017-1808, 2017-1809, 2017-1810, 2017-1812, 2017-1813, 2017-1814, 2017-1815, 2017-1816, 2017-1817, 2017-1818, 2017-183, 2017-184, 2017-1844, 2017-1845, 2017-1846, 2017-1847, 2017-1848, 2017-1849, 2017-185, 2017-1850, 2017-1851, 2017-1852, 2017-1853, 2017-1854, 2017-1855, 2017-1856, 2017-1857, 2017-1858, 2017-1859, 2017-186, 2017-1860, 2017-187, 2017-188, 2017-189, 2017-190, 2017-191, 2017-192, 2017-193, 2017-194, 2017-195, 2017-196, 2017-197, 2017-198, 2017-199, 2017-200, 2017-201, 2017-2081, 2017-2126, 2017-2128, 2017-2129, 2017-2130, 2017-2131, 2017-2132, 2017-2133, 2017-2187, 2017-2188, 2017-2189, 2017-2190, 2017-2191, 2017-2192, 2017-2193, 2017-2194, 2017-2198, 2017-2199

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HESS OHIO DEVELOPMENTS LLC
Represented by: LAUREN M. JOHNSON
VORYS, SATER, SEYMOUR AND PEASE LLP 52 E. GAY STREET
P. O. BOX 1008
COLUMBUS, OH 43216-1008

CNX GAS COMPANY LLC
Represented by: STEPHEN K. HALL
ZAINO, HALL & FARRIN, LLC
41 SOUTH HIGH STREET, SUITE 3600
COLUMBUS, OH 43215

For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
Represented by: DAVID K. LIBERATI
ASSISTANT PROSECUTING ATTORNEY DINSMORE & SHOHL, LLP

147-A WEST MAIN STREET ST. CLAIRSVILLE, OH
43950

HARRISON HILLS CITY SCHOOLS BOARD OF EDUCATION
Represented by: KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC 6400 RIVERSIDE DRIVE,
SUITE D DUBLIN, OH 43017

BELLMONT HARRISON CAREER CENTER AND SWITZERLAND OF OHIO LOCAL SCHOOLS BOARD OF EDUCATION
Represented by: CHRISTIAN M. WILLIAMS
ATTORNEY AT LAW
PEPPLE & WAGGONER, LTD. CROWN CENTRE
BUILDING
5005 ROCKSIDE ROAD, SUITE 260
CLEVELAND, OH 44131-6808

UNION LOCAL SCHOOLS BOARD OF EDUCATION
Represented by: GARY W. SMITH SMITH
LAW FIRM
316 SOUTH MAIN STREET
P. O. BOX 599
WOODSFIELD, OH 43793-0599

BELLAIRE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by: JONATHAN T. BROLLIER BRICKER
& ECKLER, LLP
100 SOUTH THIRD STREET COLUMBUS, OH 43215-4214

BARNESVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by: MEGAN D. MAURER
PEPPLE & WAGGONER, LTD. 5005 ROCKSIDE ROAD,
SUITE 260
CLEVELAND, OH 44131

ASCENT UTICA MINERALS LLC 3501 NW 63RD ST
OKLAHOMA CITY, OK 73116

Entered Thursday, June 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owners, Hess Ohio Developments LLC ("Hess") and CNX Gas Company LLC ("CNX"), and the boards of education for several school districts located throughout Belmont County appeal numerous decisions of the Belmont County Board of Revision ("BOR") in response to complaints filed against the

auditor's values for the subject parcels for tax years 2015 and 2016, and also seeking changes going back to tax year 2011. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the stipulated exhibits, and the parties' written arguments.

CNX is subsidiary of Consol Energy ("Consol") that was created for purposes of owning the property associated with Consol's oil and gas business. Prior to 2011, another Consol subsidiary, Consolidation Coal Company ("Consolidation Coal"), owned the subsurface rights for the purpose of extracting coal, having obtained them from a variety of different prior owners, though it held title to little or no surface rights above these subsurface rights (also referred to as soil rights). It is unclear as to whether any parcels were created to reflect the separation of these subsurface rights from the ownership of the soil. In 2011, Consolidation Coal transferred a portion of its subsurface rights to CNX, purportedly to vest the rights to extract oil and gas in a separate Consol subsidiary, and CNX transferred a partial interest in these rights to Hess as a joint venture to extract the oil and gas. At the time of the transfer, the Belmont County Auditor's office created new parcels, labeling them "other minerals," and assessed real property tax based on a value of $1,500 per acre. From tax year 2011 until tax year 2015, the parcels were taxed as "other mineral" parcels based on the auditor's assessment. In 2016, Hess filed complaints seeking a reduction in value to $0, asserting that the parcels represented only an interest in oil and gas that was not being extracted and should be valued as such. Hess further argued that the auditor's mischaracterization of these parcels as other minerals was a "clerical error," which should be corrected for tax years 2011 through 2014, which would result in a refund of the taxes paid for those years. In 2017, CNX filed similar complaints for parcels that were omitted from the earlier complaints, seeking a value of $0 for tax year 2016 and requesting that the auditor be ordered to recharacterize them as oil and gas rights for tax years 2011 through 2015 due to a purported clerical error.

Following hearings on the complaints, which were attended by the respective complainant and the affected boards of education, the BOR issued decisions setting forth key findings. For tax year 2015, the BOR found that Hess owned an undivided 50% interest in *only* oil and gas rights and should be reimbursed for any tax liability it had for tax year 2016 and moving forward, and for the first half of the 2015 taxes, as CNX paid for the second half taxes. The BOR also ordered the auditor to amend the parcels based upon the finding that CNX is the responsible party for the entire tax year 2015 bill. The BOR further concluded, however, that its authority was limited only to tax year 2015 as the "current year" pursuant to R.C. 5715.19. For tax year 2016, the BOR concluded that both CNX and Hess held only an oil and gas interest and the parcels did not contain an interest in any other mineral rights for tax year 2016. Additionally, the BOR again found that it lacked jurisdiction to look back to any earlier tax years and that CNX and Hess were not entitled to relief based on a clerical error by the auditor. Hess, CNX, and the boards of education appealed these decisions to this board.

At the outset, we note that we consider the present appeals based on the underlying complaints filed pursuant to R.C. 5715.19(A)(1)(d) against the determination of the total valuation or assessment of a parcel that appears on the tax list. Although there was some discussion about the applicability of R.C. 5715.19(A)(1)(a) as a complaint against the auditor's classification of the parcels made under R.C. 5703.041, this code section is not applicable. As the boards of education correctly pointed out, the auditor's classification under R.C. 5703.041 is limited to two categories, (1) residential/agricultural or (2) nonresidential/agricultural real property, the latter of which includes minerals or rights to minerals. This board has previously declined to engage in further determinations regarding the "sub-type" of property within these two classifications. *Fairview Park City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 8, 2017), BTA No. 2011-4331; *LTC Properties, Inc. v. Licking Cty. Bd. of Revision* (June 7, 2011), BTA No. 2008-A-1010. In this case, there is no request that the subject parcels should be valued as residential/agricultural, therefore R.C. 5715.19(A)(1)(a) is irrelevant.

Nevertheless, the proper characterization of the parcels at issue may be relevant to an appeal under R.C. 5715.19(A)(1)(d) where it constitutes part of the auditor's total valuation or assessment of the property. See *State ex rel. Rolling Hills Local School Dist. Bd. of Edn.*, 63 Ohio St.3d 520 (1992) (a claim that property

was erroneously recorded in an improper taxing district could be reviewed in an appeal under R.C. 5715.19(A) as the assessment of real property for taxation). Because of the nature of this case, we find that the determination as to whether the subject parcels constitute the rights to oil and gas, or mineral rights, is relevant aspect of the auditor's duty to assess the property. In reviewing the record before us, we agree with the BOR's decision that the parcels at issue reflect oil and gas rights, and not, more generally, all minerals. While we appreciate the argument from the boards of education that there must be some mineral rights that should have been taxed, a review of the subject parcels' transfer history reveals that these parcels do not represent those mineral rights, as evidenced by the testimony and corroborated by the property record cards, deeds, and conveyance fee statements. Instead, the record shows that the subject parcels were created upon Consolidation Coal's transfer of the *oil and gas rights* to CNX and title then transferred to Hess and CNX jointly. Whether "other mineral" parcels should exist, and, if so, how they should be valued and who should be responsible for the taxes paid thereon is not properly before this board, as we are limited solely to the auditor's assessment of the parcels subject to the present appeals.

Despite having found that the BOR was correct in valuing the subject parcels as oil and gas, this board finds that its valuation of the parcels is not supported by the record. As noted above, for purposes of taxation, mineral rights (including oil and gas) are classified as nonresidential/agricultural real property. R.C. 5713.041. As such, they are subject to the auditor's duty to determine the true value of the fee simple estate as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions. R.C. 5713.03. Hess and CNX argue that the subject parcels should be valued at $0 as oil and gas reserves, citing to R.C. 5713.051, which sets forth an alternative valuation methodology for oil and gas reserves on certain real property. This section, however, applies only to those reserves "with respect to a developed and producing well that has not been the subject of a recent arm's-length sale." R.C. 5713.051(B); (C). There is no indication that the reserves in the subject property meet this description. Rather, the testimony demonstrated that the reason that Hess and CNX sought to reduce their tax obligation is a direct result of their lack of production. Thus, R.C. 5713.051 does not apply and the auditor should determine the value of the subject parcels in the same manner as he would value any other real property. See *Consolidation Coal Co. v. Noble Cty. Bd. of Revision* (June 30, 1988), BTA Nos. 1985-D-291, et al., unreported.

Because an auditor is presumed to have acted consistent with Ohio law when he or she certifies a value on the tax list and duplicate, it is not a high bar to show that he or she properly exercised this authority. As such, when a party makes a challenge against value, it is well-settled that the complainant bears a burden not to merely challenge the auditor's valuation or assessment, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. See, e.g., *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶10. In this case, however, we find that the auditor did not properly exercise his authority in the initial assessment of the parcels for the tax years at issue because his valuation was based on the value of other mineral rights that were not part of the subject parcels. As such, we find that Hess and CNX have affirmatively negated the auditor's initial values and will not accord them any presumption of correctness. See *Johnson v. Clark Cty. Bd. of Revision*, 2nd Dist. Clark No. 2013 CA 32, 2014-Ohio-329 (remanding a matter to the BOR where the record did not include any reliable and probative support that the auditor's initial calculation of the current agricultural use value of a property correctly applied relevant statutory authority). See, also, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543 (holding that this board could not reinstate the auditor's value where it was clearly negated because the record showed it based on an incorrect completion percentage).

While we reject the auditor's initial values, we also reject the BOR's conclusion that the true value of the subject parcels should be $0. To the extent that Hess and CNX contend that the properties have no value because they are not currently producing any oil and gas, this board has historically rejected the argument that a property is worthless or has zero value. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 5, 2015), BTA No. 2014-1227, unreported; *Loritz v. Butler Cty. Bd. of Revision* (May 6, 2008), BTA No. 2006-K-1503, unreported. This is particularly relevant in the case where there is no

dispute as to whether the minerals (oil and gas deposits) are present and available for future production and have some value on the open market. See Ohio Adm. Code 5703-25-06(A) ("'True value in money' shall be determined, in the first instance, by the county auditor as the assessor of real property in the county on consideration of all facts tending to indicate the current or fair market value of the fee simple estate, as if unencumbered of property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. The auditor shall likewise take into consideration the location of the property and the fair market value of similar properties in the same locality."); *Consolidation Coal*, supra. Additionally, while Hess and CNX have submitted a policy from the auditor's office regarding his treatment of oil and gas parcels, we are not bound by such a policy and find that its presence further reinforces the determination that there is an active market for oil and gas rights. Accordingly, we find that the BOR's determination that the parcels should have a $0 valuation is unsupported.

In this case, this board finds itself in a unique situation where the auditor's values are affirmatively negated, the BOR's values are not correct, and the record lacks any competent and probative evidence of value, such as a recent arm's-length sale of the subject parcels or a qualifying appraisal. Ohio Adm. Code 5703-25-11(I) directs auditors to value separate oil and gas rights in accordance with the annual entry of the tax commissioner, yet no such entry has been presented as evidence. As such, we are unable to consider whether this entry sets forth a valuation methodology for oil and gas parcels that are not yet developed and in production. We further note that because the BOR appears to have been operating under an incorrect legal presumption regarding the valuation methodology for these parcels, the appropriate course of action in this case is to remand the matter to the BOR to determine the value of the subject parcels. See *Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St.3d 340, 2015-Ohio-2571, ¶18 ("But the BOR has yet to determine the value of the property. As a result, it is premature for either the BTA or this court to address the issue of value. We agree with appellants that the cause must be remanded to the BOR for a determination of value."). Accordingly, we vacate the BOR's decision to accord a value of $0 to each of the subject parcels and remand these matters to conduct further proceedings on the value of the subject parcels.

Next, we find that the BOR properly limited its jurisdiction to only those tax years for which a complaint was filed and reject the argument set forth by Hess and CNX that the new value should be retroactive to the date on which the parcels were initially created. We agree with the BOR's determination that only one tax year was properly before it, as R.C. 5715.19(A)(1) allows for complaints to be filed against certain determinations "for the current tax year," and generally does not permit a complaint to be filed against determinations made in prior years. See *Sheldon Road Assoc., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 131 Ohio St.3d 201, 2012-Ohio-581 (holding that the filing of timely complaint for current tax year may also confer jurisdiction on board of revision to consider preceding year's valuation when a county auditor redetermined value of a property for a previous tax year constitutes a determination for current year *and* the auditor changed the value after the statutory deadline for challenging that year's assessment). In this case, there is no indication that the auditor redetermined the value for any prior tax years. Thus, there is no statutory basis for the BOR (or this board) to exercise its jurisdiction over prior years based on the complaints that were filed.

Finally, we deny the requests made by Hess and CNX for the BOR and this board to order the Belmont County Auditor to correct the records and refund taxes paid for the tax years prior to the filing of the complaint. Regardless of whether such a change would constitute the correction of a clerical error or fundamental change to the valuation of the property, the BOR's administrative proceedings pursuant to R.C. 5715.19 are not the appropriate venue to attempt to force the auditor to take such an action for any prior tax years under either scenario.

Pursuant to R.C. 5715.19, a complaint is the appropriate course of action to challenge an assessment of the auditor, which is an affirmative action already made by the auditor. The BOR is not a proper venue to attempt to force the auditor to take an affirmative action, such as to comply with R.C. 319.36 to correct a purported clerical error. *Blisswood Village Homeowners Assn. v. McCormack*, 30 Ohio St. 3d 73, 75 (1988) ("Thus,

Blisswood Village could have pursued an action in mandamus, compelling the auditor to perform the duties prescribed in R.C. 319.36, but did not do so. This avenue yet remains open to appellant."); *State ex rel. Newpart Ltd. Partnership v. Donofrio*, 9th Dist. Summit No. CV 2007-10-7157, 2010-Ohio-2199, ¶17 ("Because R.C. 319.36 is the only statutory provision under which Newpart could seek recovery of its tax overpayments based on the discovery of this clerical error, it has no other adequate remedy at law."). Thus, both this board and the BOR lack authority to order the auditor to take this affirmative action.

Furthermore, a characterization as the correction of fundamental errors does not alter the outcome. We acknowledge that once the tax list and duplicate are certified, the BOR has sole authority to correct a fundamental error, i.e., "any error in the listing, valuation, assessment, or taxation of real property other than a clerical error." R.C. 319.35. As discussed earlier, however, the BOR's jurisdiction is limited to only those years for which a valid complaint is filed. *Sheldon Road*, supra, at ¶¶30-32. Therefore, the BOR in this case lacks authority to make the changes requested by Hess and CNX because no complaint was filed for those earlier tax years and the time for the BOR's review of the tax list for those years has passed. R.C. 5715.16. Accordingly, this board agrees with the BOR's finding that it lacked jurisdiction to consider any aspect of the auditor's assessment for prior tax years.

For the reasons above, this board hereby affirms the decisions of the BOR with respect to its finding that the subject parcels constitute oil and gas rights and should be valued accordingly. Additionally, we affirm the BOR's decisions to limit its jurisdiction only to those tax years for which complaints were filed. Finally, we hereby vacate the BOR's decisions that the value of the subject parcels was $0 for the tax years at issue and remand these matters to the BOR with instructions to conduct further proceedings in order to determine the true value of the fee simple estate for each parcel as real property.

OHIO BOARD OF TAX APPEALS

2RMC PROPERTIES LLC, (et. al.),	CASE NO(S). 2018-1749, 2018-1750, 2018-1752, 2018-1753
Appellant(s),	
vs.	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	DECISION AND ORDER
Appellee(s).	

APPEARANCES:

For the Appellant(s) - 2RMC PROPERTIES LLC
Represented by:
TIMOTHY A. PIRTLE
ATTORNEY AT LAW
2935 KENNY ROAD, SUITE 225
COLUMBUS, OH 43221

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Friday, June 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] In these four consolidated cases, the subject properties are owned by appellant Clayton Werden, his spouse, a related limited liability company, or some combination thereof. Appellants waived their right to a hearing. We now decide these cases on the notices of appeal, the transcripts certified by the auditor, and the parties' written arguments.

[2] Before turning to the facts, we review the law governing each appeal. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to

perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[3] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. A sale that postdates tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. In the absence of a qualifying sale, a party may carry their burden with expert or nonexpert evidence of value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588. When reviewing appraisals, this board "is vested with wide discretion in determining the weight to be given to" each appraisal. *EOP-BP Tower, LLC v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096. When an owner proceeds on his or her subjective opinion of value, we properly reject that opinion "when the evidence that forms the basis for the owner's opinion, does not "demonstrate the value requested." *Gundling v. Hamilton Cty. Bd. of Revision* (Jan. 16, 2019), BTA No. 2018-791, unreported (citing *Schutz*, supra, at ¶ 20).

2018-1749

[4] This property was the subject of litigation in *Clayton Werden/2RMC Properties LLC v. Hamilton Cty. Bd. of Revision* (Dec. 28, 2017), BTA No. 2017-1578, unreported. The parties settled that case before a merit decision was issued.

[4] The auditor valued this property at $149,840 for tax year 2017, and appellant filed a decrease complaint requesting a value of $67,190. The subject was not recently sold. The most recent sale was in July 2013 for $150,000. Because that sale occurred more than 24 months prior to tax-lien date, we presume the sale is not recent. *Akron*, supra. No party asks this board to adopt that sale price, and we find no evidence the sale continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra.

[6] At the BOR hearing, Mr. Werden appeared with counsel. He did not have the subject appraised. Instead, he relied upon unadjusted market data, his subjective opinion of value, and a stipulation of value for a prior tax year. See *Clayton Werden/2 RMC Properties*, supra. An appraiser from the auditor's office testified but did not develop a full appraisal. The BOR ultimately adopted a value of $105,000, per the stipulated value from the prior case referenced above. Mr. Werden appealed, and the auditor argues this board should either adopt the BOR's value or reinstate the auditor's original value based on lack of evidence.

[7] Again, the Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki*, supra. Tax year 2017 was a reappraisal year for Hamilton County. Here, it appears the BOR adopted its value solely because a stipulation of value had been made for a prior tax year during the prior triennial period. It is well settled that each tax year stands on its own. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, ¶ 16; *Trebmal v. Cuyahoga Cty. Bd. of Revision* (Nov. 24, 1993), BTA No. 1991-M-269, unreported. This board has been clear "the fact that value has been modified in another year is not competent and probative evidence that a different year's value should be changed."

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision (Mar. 4, 2019), BTA No. 2018-253, unreported; *Massillon City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Nov. 29, 2017), BTA No. 2016-1926, unreported. Because the BOR reduction was based solely on the stipulation from the prior triennial period, we do not find it to be competent evidence of value for tax year 2017. Moreover, the auditor was under a duty to reappraise the subject for tax year 2017, thereby cutting off the carry forward of the prior year's value. See *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Mar. 6, 2018), BTA No. 2017-476, unreported. The auditor performed his statutory duty and valued the subject at $149,840.

[8] The burden is on appellant to prove the adjustment is warranted. Here, however, this board finds appellant did not carry that burden. Having disposed of the stipulation of value for the prior triennial period, we turn to the other evidence presented by appellant, i.e., unadjusted market data and owner's opinion of value. Raw sales data alone is not a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). Each comparable varies significantly from one another and the subject. Additional evidence is needed to control for those variables. See *Grenny*, supra, at 7-9. We also note the auditor's appraiser testified one of the Mr. Werden's sales was a contaminated property.

[9] This board likewise does not find that Mr. Werden's opinion of value to be dispositive. To be sure, an owner is entitled to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). While an owner might be an expert in the subject, an owner might not be an expert in valuation or the market. The Supreme Court has also held "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). Here, Mr. Werden's opinion is unsupported by tangible evidence.

[10] Having independently reviewed the evidence, we order the auditor's original valuation to be retained for tax year 2017 as follows:

PARCEL NUMBER 528-0004-0264-00

TRUE VALUE

$149,840

TAXABLE VALUE

$52,440

2018-1750

[11] This board considered this property in *Werden v. Hamilton Cty. Bd. of Revision* (July 23, 2015), BTA No. 2014-4615, unreported. In that case, we rejected the appraisal of Mr. Werden's appraiser, Todd Augustine, finding the report was inaccurate and outside the scope of his expertise. We ultimately ordered the property valued in accordance with the auditor's valuation.

[12] The county auditor valued the subject at $152,880 for tax year 2017, and Mr. Werden filed a decrease complaint requesting a value of $74,766. The facts of this case are much the same as BTA No. 2018-1749 discussed above. Mr. Werden argued the decrease was justified because of a stipulation of value for a prior year, unadjusted sales data, owner's opinion of value, and negative characteristics. Again, we do not find the stipulation of value for the prior triennial period is competent evidence of value. Here, the BOR made only a slight reduction to $145,240 finding the auditor should have classified the subject's condition as poor rather than fair. The BOR appears to have changed that condition based on the testimony of the auditor's appraiser in this case, who testified the change was appropriate but continued to argue the reduction to the value requested by Mr. Werden was not justified. We agree such a change is supported by the evidence. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002.

[13] Turning to the rest of Mr. Werden's evidence, we find he has not carried his burden of showing the subject should be valued at $74,766. Again, raw sales data alone is not a substitute for a qualifying appraisal. This board likewise does not find the Mr. Werden's opinion of value to be dispositive because it is not supported by "tangible evidence of a property's value. See *Amsdell*, supra. The Supreme Court has also been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra,at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). While those negative characteristics could conceivably affect value, a party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶ 7. A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*, supra). Here, the impact those conditions could have on value is not self-evident. Accordingly, we cannot rely on the evidence of the subject's negative characteristics to adjust the subject's value.

[14] Having independently reviewed the evidence, we order the property valued as follows for tax year

2017: PARCEL NUMBER 528-0002-0242-00

TRUE VALUE

$145,240

TAXABLE VALUE

$50,830

2018-1752

[15] We considered this property, a residence, in *Werden v. Hamilton Cty. Bd. of Revision* (July 23, 2015), BTA No. 2014-4613, unreported. Therein, Mr. Werden relied on the appraisal of Mr. Augustine, but we rejected that appraisal because he did not appear to authenticate and testify about the appraisal. This board ordered the property to be valued in accordance with the auditor's original valuation.

[16] The auditor valued this property at $285,130 for tax year 2017, and Mr. Werden filed a decrease complaint requesting a value of $185,000 stating "[h]ouse needs updated, new kitchen, wall cracks, foundation problems, defective build." Mr. Werden amended his opinion of value to $187,000 based on the appraisal of Todd Augustine. The auditor's appraiser, who testified at the BOR hearing, accused Mr. Augustine of bypassing sales nearby geographically in favor of sales further away in order to reach sales at lower prices. The auditor's appraiser provided alternative sales, all within 0.5 miles, to show Mr. Augustine's appraisal was not credible. She noted Mr. Augustine completed the appraisal in April 2018 but

did not disclose the appraisal to the county until the eve of hearing; therefore, the auditor's appraiser testified she was unable to fully review the appraisal. She further testified that "Mr. Augustine has not provided a base value *** based on the distance of the comps, the first comp is 2.5 miles away in Blue Ash." She testified the comps were in significantly different areas from the subject. She also testified "you must pass ten comps to get to the comps" used by Mr. Augustine. The BOR ultimately found Mr. Augustine's appraisal was not credible, and the BOR affirmed the auditor's value. Mr. Werden appealed.

[17] When reviewing appraisal evidence, "this board is vested with wide discretion" to make factual findings. *Till v. Stark Cty. Bd. of Revision* (Mar. 7, 2019), BTA No. 2018-1676, unreported; *Torbik v. Montgomery Cty. Bd. of Revision* (Mar. 7, 2019), BTA No. 2018-1701, unreported. Here, this board does not find Mr. Augustine's appraisal credible, and, therefore, we see no reason to deviate from the auditor's value. First, as the auditor's appraiser noted, it appears the comparables were not the best available. It appears they were cherry-picked because of their low sale prices. The market data presented by the auditor's appraiser confirms better comparables were available, and those comparables support the auditor's valuation. We note all sales presented by the auditor's appraiser are close geographically, similar in size, similar in character, and, in fact, many are on the same street. While we do not find that evidence to be independent evidence of a new value, the evidence does rebut the appraisal. We also note Mr. Augustine developed a cost approach, which rendered a value of $245,840, i.e., very close to the auditor's value. Finally, Mr. Augustine did not consistently adjust for variables. No adjustments were made despite the fact one or more comparables vary from the subject in acreage, quality of construction, age, heating, and porch/deck. It is unclear why adjustments were not made for those variables. This board likewise does not find Mr. Werden's testimony about needed repairs to be dispositive. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi*, supra.

[18] Having rejected Mr. Werden's evidence, we order the subject valued in accordance with the auditor's original value for tax year 2017, as follows:

PARCEL NUMBER 612-0080-0366-00

TRUE VALUE

$285,130

TAXABLE VALUE

$99,800

2018-1753

[19] This board considered this property, a single-family rental, in *Werden v. Hamilton Cty. Bd. of Revision* (Aug. 29, 2013), BTA No. 2012-W-4082, unreported. In that case, we disregarded the appraisal of Mr. Augustine and ordered the property to be valued in accordance with the auditor's original valuation.

[20] The auditor valued this property at $111,000 for tax year 2017, and Mr. Werden filed a decrease complaint requesting a value of $70,000 citing "defects in foundation and walls due to settling, No kitchen or bathrooms, etc." Mr. Werden amended his opinion of value to $88,000 per an appraisal by Mr. Augustine.

[21] he auditor describes the BOR proceeding and Mr. Augustine's appraisal as follows:

"Mr. Augustine had two appraisal reports. One was for $102,000 as of 1/1/2011. The other was for $88,000 as of 7/21/17. The cover sheet indicates a date of 1/1/17, but the report at one point states 7/21/17 (there is no explanation of why the value would have decreased in otherwise rising market).

"Once again the appraisal by Mr. Augustine is lacking in probative value.

"Once again the location of the comparables are from .26 to .78 miles away. These are (while not as bad as case #2018-1752) still what the BOR stated were not comparable locations. The BOR also pointed out: Comp #1 is a 1 ½ story, not in a comparable location. Comp #2 is resold in October, 2011 for $238K. Comp #3 is a 1 story, not in a similar location. Mr. Augustine had the wrong sale price. Comp #4 is resold in 2018 for $254K. Comp #5 is located in Columbia Tusculum, non-comparable location.

"***Mr. Augustine's gross adjustments went from 39.2% to 51.5% -- adjustments so large as to make them meaningless as comparables. See e.g., The Appraisal of Real Estate, pp. 392-393.

"Once again his cost to cure is $136,036. There is no indication of how this was arrived at or how it was so different from his sales comparison approach or how he reconciled his final value.

"In addition, even though the property is a rental property, no income approach was performed." Appellee Auditor's Brief at 8.

[22] This board agrees the magnitude of adjustments is significant. Each comparable sale sold for between $111,000 - $122,000, and Mr. Augustine significantly adjusted each comparable between 39% and 51.5%. As the auditor correctly noted, the magnitude of adjustments significantly diminishes its value. As with the prior appraisal discussed above, the adjustments are not consistent. One or more comparable varies from the subject in location, quality of construction, age, porch/patio, but no adjustments were made to control for those conditions. This board also notes no income approach was developed in spite of the use as a rental. The appraisal states "[t]he income approach to value was not developed (ND) due to a lack of sales of similar single-family rental houses in the subject neighborhood." Not only does that statement call into question the sales comparison approach he developed, but it also does not address why an income approach could not be developed. The appraisal is also clear he valued the subject at $136,036 using a cost approach, which is even higher than the auditor's value. For these reasons and the reasons argued by the auditor, this board does not find the appraisal to be credible evidence of value. We likewise reject Mr. Werden's evidence about the condition of the property. See *Rozzi*, supra.

[23] This board argues the subject to be valued in accordance with the following values for tax year

2017: PARCEL NUMBER 520-0281-0207-00

TRUE VALUE

$111,000

TAXABLE VALUE

$38,850

OHIO BOARD OF TAX APPEALS

BOARD OF ST. CLAIR TOWNSHIP TRUSTEES- JUDY VALERIO, TOM BARNES, JOHN SNYDER, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-49

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BOARD OF ST. CLAIR TOWNSHIP TRUSTEES- JUDY VALERIO, TOM BARNES, JOHN SNYDER
Represented by:
GARY SHEETS
GARY L. SHEETS, ATTORNEY AT LAW
1731 CLEVELAND AVENUE
HAMILTON, OH 45013

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

CITY OF HAMILTON, OHIO
Represented by:
HEATHER SANDERSON LEWIS
LAW DIRECTOR
232 HIGH STREET
HAMILTON, OH 45011

CITY OF HAMILTON, OHIO
Represented by:
STEVEN TOOMAN
ESQUIRE
232 HIGH STREET
HAMILTON, OH 45011

Entered Friday, June 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This appeal presents the question of whether the Butler County Board of Revision ("BOR") had jurisdiction to consider St. Clair Township's complaint against the Butler County Auditor's assessment of parcels annexed to the City of Hamilton.

By way of background, prior to March 27, 2002, the City of Hamilton ("City") annexed portions of four townships to which it is adjacent, including St. Clair Township ("Township"). However, it did not formally exclude the annexed portions from their respective townships. As a result, the annexed property remained in overlapping taxing districts, i.e., the township and the City. Despite the failure to formally exclude the annexed property from the townships, the Butler County Auditor removed the property from the townships and, as a result, assessed none of the applicable inside millage on such property to the townships. Upon discovering the apparent error, the City presented a boundary adjustment petition to the Butler County Commissioners, which approved the petition in October 2016. The effect of the petition is to remove the annexed property from St. Clair Township (and the other affected townships) such that the annexed property is in the City's taxing district but not the Township's. See *State ex rel. St. Clair Twp. Bd. of Trustees v. Hamilton*, Slip Opinion No. 2019-Ohio-717. The Township argues the boundary adjustment petition was improper and that the property annexed to the City of Hamilton has still not been properly excluded from the Township. It filed a complaint with the BOR arguing that the 26,807 parcels at issue, i.e., those subject to the boundary adjustment petition, are incorrectly assigned to *only* the City of Hamilton taxing district.

The BOR ultimately dismissed St. Clair Township's complaint for lack of jurisdiction, after receiving legal argument from the Township and the City. The Township appealed to this board. We must now decide whether the BOR had jurisdiction to consider the complaint.

R.C. 5715.19(A)(1) provides the determinations against a complaint may be filed. R.C. 5715.19(A)(1)(d) provides that a complaint may be filed against "[t]he determination of the total valuation or assessment of any parcel that appears on the tax list ***." In *State ex rel. Rolling Hills Local School Dist. Bd. of Edn. v. Brown Cty.*, 63 Ohio St.3d 520 (1992), the Ohio Supreme Court held that the assessment of parcels on the tax list includes "assigning parcels to taxing districts and recording them accordingly on the tax list." Id. at 521. The incorrect recording of property on the tax list may therefore be appealed to a county board of revision, "since the recording is a part of the assessment." Id. See also *Weathersfield Twp. v. Trumbull Cty. Budget Comm.*, 69 Ohio St.3d 394 (1994) ("Disputes by taxing authorities over incorrect listings of property are appealable to the county board of revision."); *Carlisle Twp. Bd. of Trustees v. Lorain Cty. Bd. of Revision* (Sept. 15, 2009), BTA No. 2007-M-1229, unreported. We agree with the Township that its complaint properly vested jurisdiction in the BOR to consider the assessment of the parcels at issue, i.e., the 26,807 parcels excluded from the township in the October 2016 boundary adjustment petition.

The county's arguments on appeal address the merits of the complaint – not whether the BOR had jurisdiction to consider the complaint itself. Whether the BOR can deliver the relief the Township seeks is not before us in this matter. It is clear under R.C. 5715.19(A)(1)(d) that the complaint vested jurisdiction in the BOR to consider whether the parcels at issue were assigned to the correct taxing district(s) and recorded accordingly on the tax list. The BOR's decision to dismiss the complaint for lack of jurisdiction put the cart before the horse. While it may not have authority to grant the relief sought by the Township, the BOR clearly has authority to determine whether the parcels were assigned to the correct taxing district by the auditor.

We also reject the City's argument, in its brief, that the complaint failed to vest jurisdiction in the BOR because it failed to list the parcels at issue and the owners thereof. The City is correct that a complaint against the assessment of real property must identify the property at issue to vest jurisdiction in the BOR. *Carlisle Twp.*, supra. However, it appears the parcels at issue were specified in a DVD submitted with the complaint and referenced on the complaint form. (Such data appears to have been included in the statutory transcript certified to this board, and identified as "17-405_CD contents.pdf.") Further, the Supreme Court has held that the failure to accurately identify the owner of the property at issue is not a jurisdictional requirement. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶23 ("there is no statutory requirement that a complainant correctly name the property owner in a valuation complaint"). We find the complaint was jurisdictionally sufficient.

The BOR's decision to dismiss the complaint for lack of jurisdiction was therefore improper and is hereby reversed. This matter is hereby remanded to the BOR to render a decision on the merits of the complaint.

OHIO BOARD OF TAX APPEALS

HARRAH'S OHIO ACQUISITION COMPANY, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2014-4596, 2014-4810, 2014-4818, 2014-4896 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HARRAH'S OHIO ACQUISITION COMPANY, LLC
Represented by:
PAUL M. JONES, JR.
PAUL JONES LAW, LLC
435 EAST MAIN STREET
SUITE 220
GREENWOOD, IN 46143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BOARD OF EDUCATION OF THE WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT
Represented by:
THOMAS A. KONDZER
THE LAW OFFICE OF THOMAS A. KONDZER, LLC
1991 CROCKER ROAD, SUITE 600-712
WESTLAKE, OH 44145

Entered Friday, June 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters come again before this board following remand by the Ohio Supreme Court. *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370 ("*Harrah's III*"). In its decision vacating our March 17, 2016 decision, and remanding for further consideration, the Supreme Court held this board erred in failing to fully consider the appraisal evidence submitted by the Warrensville Heights City School District Board of Education ("BOE"). We therefore again consider the value of the subject property for tax year 2013 upon the notices of appeal, the statutory transcripts certified

pursuant to R.C. 5717.01, the record of this board's hearing ("H.R."), the parties' written arguments, and the court's decision. We note that the court affirmed this board's earlier denial of the BOE's motion to take judicial notice of certain facts. *Harrah's III*, supra, at ¶29-32.

This property has been the subject of several appeals to this board and to the Ohio Supreme Court. The property, consisting of parcel numbers 761-18-001 and 771-03-001, is a 128-acre horse-racing facility with a track, barns and other structures, and an eight-story grandstand. In July 2010 the property was purchased by the current owner, Harrah's Ohio Acquisition Company, LLC ("Harrah's"). Between January 1, 2012 and January 1, 2013, Harrah's indicates it has spent approximately $7,000,000 improving the property. Shortly after tax lien date, Harrah's obtained a video lottery terminal ("VLT") license. It began operating as "Thistledown Racino" in April 2013.

The county fiscal officer initially valued the property at $37,658,000 for tax year 2013; however, a prior BOR decision for tax year 2012, which was affirmed by the Supreme Court in *Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 277, 2017-Ohio-8845 (" *Harrah's II*"), valued the property at $16,300,000. Harrah's and the BOE both filed complaints seeking changes in value for tax year 2013: Harrah's requested a value of $23,315,889 (the BOR's prior value plus its expenditures on improvements as of tax lien date), and the BOE requested an increase to $43,000,000 (the July 2010 sale price).

At the BOR hearing, Harrah's relied on the BOR's prior decision, appraisals by David Sangree, MAI, opining value as of January 1, 2010 and January 1, 2012, its construction cost schedule, and testimony from its CFO, Amy Kuzdowicz. Ms. Kuzdowicz testified to Harrah's estimate of the state of completion of its new construction on the property, based on its internal construction budgeting. Based on the construction costs as of December 31, 2012, compared to the total construction budget, Harrah's estimated the project was 37% complete on tax lien date. Harrah's asked that its costs up to tax lien date ($7,015,889) be added to Mr. Sangree's 2012 appraisal value ($16,300,000), for a total value of $23,315,889 as of January 1, 2013. For its part, the BOE continued to rely on the July 2010 sale and objected to consideration of Mr. Sangree's appraisals because they did not opine value as of tax lien date. After considering the evidence and testimony, the BOR concluded that no change in value was warranted.

Both Harrah's and the BOE appealed to this board. At this board's hearing, both parties presented appraisal evidence and testimony. Harrah's presented the report and testimony of Mr. Sangree, who opined a value of $22,000,000 for the subject real property as of January 1, 2013. Mr. Sangree placed primary weight on his income capitalization approach, by which he valued the ongoing concern of the racino and deducted the value of the gaming license, personal property, and income loss for the first three months of 2013 during which the racino was not yet open. Given that Thistledown Racino was fully operating for the entire year of 2014, Mr. Sangree estimated net operating income using 2014 as a representative year. In estimating income, he looked at the subject property's historical revenues from 2011 through 2014, four comparable gambling properties in Atlantic City, and confidential information about other casinos from Hotel & Leisure Advisors' internal data. He separately estimated food and beverage revenue, other departments revenue (e.g., retail, lease to food outlet, ATM revenue, etc.), gaming revenue, and pari-mutuel revenue. Mr. Sangree noted gaming revenue declined "from 2013 to 2014 on a device per day basis," and opined that the reason was, in part, the opening of the Hard Rock Rocksino-Northfield Park and the Hollywood Mahoning Valley Race Course in late 2013 and 2014. H.R., Ex. 1 at E-8. He also noted a decline in the subject's pari-mutuel revenue due to a dispute with the Horseman's Association that was resolved in March 2014. Id. He then estimated expenses, including casino promotional allowances, food and beverage expenses, retail and entertainment expenses, gaming expenses, pari-mutuel expenses, salaries/wages/benefits, administrative expenses, management fee, and property operation and maintenance expenses, based on the subject's historical performance and data from other gambling properties. Based upon this income and estimates of variable expenses, Mr. Sangree estimated the subject's income before "fixed charges" would be $62,662,000. He then estimated fixed charges for gaming taxes, insurance, and reserve for replacement, to conclude to a net operating income for the overall going concern of

$18,299,000. He then capitalized the income at a 13.75% capitalization rate for 2013, plus a 3.39% tax additur, and arrived at an indicated value for the going concern of $106,791,785 as of January 1, 2013.

From his overall value number, Mr. Sangree deducted $50,000,000 for the gaming license, $30,700,000 for personal property, and 25% of net income for income loss during the months prior the racino opening in April 2013. For the gaming license, he noted the subject property was granted a racino license in 2013 after paying $50,000,000 to the state of Ohio. He provided in his report six sales of gambling licenses for properties in Ohio, Pennsylvania, and New York. H.R., Ex. 1 at F-21. After excluding the New York fee, which was far outside the range of the remaining comparables, the average price was $28,583,333. He ultimately relied on the price paid for the subject's racino license. For the personal property/furniture, fixtures and equipment ("FF&E"), Mr. Sangree looked to the capital expenditures provided by Harrah's, which indicated $24,186,742 of FF&E was acquired in 2013 and $172,913 in 2014, and Harrah's balance sheet for the property. In deriving his "net FF&E" value as of January 1, 2013, he took the FF&E on the balance sheet as of December 31, 2014, deducted accumulated depreciation, and then deducted the capital expenditures in 2014. After deducting the value of the gaming license, personal property, and income loss for the first three months of 2013 Mr. Sangree opined that the value of the real estate under his income approach, i.e., the remainder, was $21,500,000 as of January 1, 2013.

Mr. Sangree also performed a sales comparison approach using four comparable sales of racetracks in Ohio and concluded to a value of $24,800,000, from which he deducted $2,700,000 for FF&E (accounting for personal property on the balance sheet as of the end of 2014 and deducting depreciation, and expenditures made in 2013 and 2014), to conclude to a value of $22,100,000 as of January 1, 2013. Finally, he performed a cost approach. He estimated the value of the underlying land at $65,336 per acres based on six comparable sales, valued each of the structures on the property using Marshall Valuation Service, and deducted 20% for functional obsolescence for the grandstand in 2013, due to its unusually large size, and 5% for external obsolescence "due to the impact from the growth in competition of casinos and racinos regionally and in neighboring states." H.R., Ex. 1 at G-14. Under his cost approach, he valued the subject real property at $23,100,000 as of January 1, 2013. Placing most weight on his income approach, Mr. Sangree opined a final value of the subject real property of $22,000,000 as of January 1, 2013.

The BOE presented the appraisal report and testimony of Douglas F. Bovard, CAE, who opined a value of $44,500,000 as of January 1, 2013. Mr. Bovard took a vastly different approach to valuing the subject real property. Rather than value the overall going concern and deducting for the non-real-estate components, Mr. Bovard used a discounted cash flow ("DCF") analysis assuming "a lease of the subject property to a racetrack/casino operator at market rent for the real property," and a five-year holding period. H.R., Ex. A at 67-68. While this board had previously determined that Mr. Bovard appraised the leased fee interest in the property, rather than the fee simple interest, the court found such determination to be in error and noted it has previously recognized that valuing an owner-occupied property as if it were leased at market terms is an appropriate way to value real property for tax valuation purposes. *Harrah's III*, supra, at ¶27, citing *Meijer Stores, Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479.

In determining a lease rate appropriate for the subject property, Mr. Bovard explained that "[o]ur research into actual leases of pari-mutuel racetrack facilities *** indicates that rentals for such facilities are generally based upon a percentage of the wagering handle from" live races, simulcasting of races, and VLT revenues. H.R., Ex. A at 69. He acknowledged a scarcity of racetrack and casino leases; he utilized pari-mutuel racetrack leases with terms commencing from March 1984 to September 1996 from properties located in Illinois, Pennsylvania, California, Oregon, and Iowa, and two confidential off-track wagering facility leases from 1990 and 1992. From these, he estimated the percentage rent applicable for each type of revenue. Mr. Bovard estimated the wagering handles for the subject property and a 1% management fee expense. He determined his 10% discount rate based on the Korpacz net lease market survey and the Realtyrates.com land lease market survey, a residual capitalization rate of 8% based on the same sources, and a 2% cost of residual sale. Applying his estimates in a DCF analysis, Mr. Bovard arrived at a value of
$47,800,000 for the real property as of January 1, 2014. He also performed a direct capitalization analysis

on his estimated net operating income, using a 8% capitalization rate, to arrive at a value of $48,500,000 as of January 1, 2014. To derive a value under the income approach as of tax lien date (January 1, 2013), Mr. Bovard changed the first year income in his DCF analysis to account for the fact that VLTs were not operating until April 9, 2013. H.R., Ex. A at 83. Such change resulted in a value of $44,700,000. He also capitalized the second year net operating income from his DCF analysis at 8% and discounted such value to present worth, to determine a value of $44,200,000 under the capitalization approach as of January 1, 2013. Mr. Bovard ultimately determined the value of the subject real property as of January 1, 2013, was $44,500,000. Like Mr. Sangree, Mr. Bovard also completed a cost approach to value which indicated a value of $48,000,000, although he ultimately did not place much weight on the resulting value. He did not complete a sales comparison approach for the property as improved.

As we weigh the appraisal evidence, we initially note that, while the subject property sold in July 2010, such sale has been held not to be indicative of value. *Harrah's III*, supra, at ¶33. We also note that following the court's remand of this matter, the court decided *HCP EMOH, L.L.C. v. Washington Cty. Bd. of Revision*, 155 Ohio St.3d 378, 2018-Ohio-4750. In *HCP*, the court addressed the legality of appraising property based on a net lease rate derived from the income generated by the business operating on the property. There, the appraiser had utilized a "lease coverage ratio" to isolate the cash flow attributable solely to real property in an assisted living facility. Such ratio was derived from the net operating income of the going concerns of similar properties with absolute net leases. The appraiser applied the resulting lease coverage ratio to the going concern net operating income for the subject property to derive a real-estate only income, which he then capitalized to determine a real property value. Id. at ¶7-10. The court found such approach legally flawed, based on the appraiser's explanation that the net leases rates were based on a percentage of the net operating income of the business. The court cited to its decision in *Higbee Co. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 325, 2006-Ohio-2, where it "observed that '[i]f it is the real property that is being valued, its valuation cannot be made to vary depending on the success or lack thereof of the businesses located on the property.' *Id.* at ¶ 44." *HCP*, supra, at ¶18. The court found the lease coverage ratio analysis flawed and reversed this board's decision relying on such approach.

Here, we find Mr. Bovard's approach to valuing the subject property runs afoul of the same problem the court analyzed in *HCP*. While his approach to valuing the property, assuming it would be leased on a net basis, is appropriate, the lease rate he derived is based on a percentage of the various types of revenue from the business conducted at the subject property. Just as in *HCP* and in *Higbee*, a lease rate derived from such revenue reflects business value, not realty value. We therefore find that, just as in *HCP*, "it follows that any subsequent calculations built on the lease-coverage ratio, including his final opinion of value, are flawed, too." *HCP*, supra, at ¶20. We reject Mr. Bovard's income approach in its entirety.

Mr. Bovard also did a cost approach. While both appraisers performed cost approaches to value, because neither placed substantial weight on the cost approach, we place no weight on them.

We therefore turn to Mr. Sangree's income capitalization and sales comparison approaches to value. Mr. Sangree placed primary weight on the income approach. Many of the BOE's criticisms of his approach were addressed by the court in its decision. Specifically, the court rejected the BOE's argument that it was contrary to law to attribute a separate value to the owner's opportunity to acquire racing and VLT licenses, *Harrah's III*, supra, at ¶17, that it was contrary to law to deduct for the value of the VLT license, id. at ¶24, and found no error in this board's assessment of the overall "reliability and credibility" of Mr. Sangree's report. Id. at ¶ 25. In our prior decision, this board found his appraisal credible and relied on Mr. Sangree's appraisal in determining value. We do the same again in this decision.

As this board has repeatedly acknowledged, "the appraisal of real property is not an exact science, but is instead an opinion ***." *Snyder v. Hamilton Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-6, unreported. See also *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. The appraisal process inherently includes making a wide variety of

subjective judgments about the data to rely upon, the adjustments to render such data usable, and the

interpretation and evaluation of the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. Much of the BOE's arguments against Mr. Sangree's appraisal analysis relates to his judgments about the adjustments to be made and the selection of data. We reject the BOE's arguments and find Mr. Sangree adequately supported his selection of data and his adjustments and deductions. Indeed, most of the BOE's arguments, to the extent not already rejected on appeal, do not relate to Mr. Sangree's income approach. It criticizes inaccuracies in his land sales and adjustments made to his comparable sales, neither of which affect his ultimate opinion of value based on the income approach. Upon review of Mr. Sangree's income approach and related testimony, we find his opinion of value of $21,500,000 as of January 1, 2013 is reasonable, well supported, and the best evidence of the property's value as of tax lien date.

Based upon the foregoing, we find the true and taxable values of the subject real property as of January 1, 2013, allocated between the parcels in accordance with the fiscal officer's initial values, see *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, were as follows:

PARCEL NUMBER 761-18-001

TRUE VALUE

$3,195,200

TAXABLE VALUE

$1,118,320

PARCEL NUMBER 771-03-001

TRUE VALUE

$18,304,800

TAXABLE VALUE

$6,406,680

OHIO BOARD OF TAX APPEALS

ARBORS EAST RE, LLC., (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2014-4527, 2014-4607

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ARBORS EAST RE, LLC.
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOLS
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, June 10, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is once again before the Board of Tax Appeals upon remand from the Supreme Court of Ohio, which issued a decision and judgment entry in *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611, vacating this board's decision and order, dated July 30, 2015. This board had determined that the total true value of the subject property was $7,490,000 as of January 1, 2011, having found that an April 5, 2011 sale provided the best evidence of the value for the subject property and that the appellant property owner failed to establish that a portion of the purchase price reflected consideration for items other than real property. The court criticized this board for failing to exercise our statutory authority to obtain a complete record where it was clear some evidence that was relied upon by the board of revision ("BOR") was missing from the transcript it certified pursuant to R.C. 5717.01. The court also held that this board erred in holding that it was improper as a matter of law to allocate a portion of the sale price to goodwill in the sale of an operating skilled nursing facility. The court remanded the

matter and ordered this board to "determine whether – and if so, what portion of – the sale price should be allocated to assets other than real estate," after we exercise our authority to obtain a complete record. Id. at ¶24. On remand, we offered the parties an opportunity to submit additional written argument and ordered the parties to supplement the record with any documents that the BOR failed to transmit during earlier proceedings and were not already part of the record.

The subject property is improved with a skilled nursing and rehabilitation facility and is identified on the auditor's records as parcel numbers 010-196382-00 and 010-198395-00. On April 5, 2011, the operator, through a subsidiary it created to hold the real property (appellant), purchased the subject property from its landlord, resulting in its ownership of the both the real property and the going concern. Neither the conveyance fee statement nor the purchase agreement allocated any of the $7,490,000 sale price to non-realty assets, but appellant maintains that it purchased the entire going concern, including tangible and intangible assets in addition to the subject real property. The BOR found that some equipment changed hands and reduced the purchase price based on a document (the seller's Schedule D-1) that was not transmitted to this board in the transcript and was not previously submitted by either party on appeal. In our prior decision, we found, therefore, that the BOR's allocation was not supported, though we acknowledged that our record was incomplete. The court vacated this board's decision because it was based on an incomplete record, holding that "[w]hether to use the sale price is not in dispute; the controversy lies in whether and how to allocate that sale price among assets." Id. at ¶4. In order to properly resolve the controversy, the court indicated that we must perform three tasks: (1) exercise our authority to obtain a complete record for deciding the case, (2) determine where there is adequate support to find that any of the consideration paid by appellant was for assets other than real estate, and (3) if the record supports a conclusion that the sale did include assets other than real estate, then determine the proper allocation of the total purchase price.

Initially, we note that we gave the parties adequate opportunities to supplement the record, and the parties submitted several documents, including the financing appraisal, Schedule D-1 analysis, and the lease amendments that were provided to the BOR. Thus, we accomplished the first task assigned by the court and are able to base our decision on a complete record. After reviewing these documents, we find that they support the BOR's reduction for equipment but confirm this board's prior conclusion that no allocation should be made for any other non-realty assets.

Appellant argues that because the sale was an operating skilled nursing and rehabilitation facility at the time of the transfer, it must have sold as a going concern and the sale included other assets. We acknowledge that such facilities can and do transfer as a going concern, as the court noted that an appraisal from Samuel D. Koon, MAI, was "particularly incisive" because it provided market justification for viewing the transaction as a "bulk sale" that included both real property and other non-realty assets. Id. at ¶23. Just because a property *can* transfer in this manner, however, does not establish that the subject

property did in this case. Although the court noted that Koon's appraisal could be helpful to allocate the total purchase price among the various assets, the burden remains with appellant to prove that any such allocation is necessary. The court did not hold that the transaction was a "bulk sale," but rather that this board must consider all evidence to reach a conclusion on this issue. An owner who seeks to reduce the valuation of real property below the full sale price bears the burden of showing the propriety of allocating some portion of that reported price to other assets. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921; see, also, *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249. Appellant relied on testimony from individuals with no first-hand knowledge of the sale, which we find is not sufficient to establish which assets transferred without other corroborating indicia to support these conclusions. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046 ("*UTSI*").

In response to the court's second directive and based on the record before us, we find that the April 2011 transaction was a "bulk sale" that included the transfer of personal property but was not the sale of the entire going concern. Appellant presented testimony from Koon and its property tax manager, and both

witnesses explained that it was their understanding that the property sold as a going-concern. Koon, therefore, valued the property by reducing the recorded sale to account for non-realty items based on the balance sheet from the owner for equipment, his conclusion of market-value for the certificates of need, and his estimation the business value of the operating nursing home, to determine that the value of the real property was $4,450,000. For the reasons more fully described below, we find that the record corroborates Koon's allocation to personal property but fails to support appellant's contention that any other non-realty items were included in the transaction.

In order to determine whether the record shows that appellant purchased the going concern, we find it instructive to first look at the relationship of the parties prior to the sale. In this case, although no one challenges that it was an arm's-length transaction, it is undisputed that the parties had a landlord-tenant relationship prior to the sale, as the buyer's parent company had operated the facility located on the property since its construction in 1984 before it exercised its option to purchase the property pursuant to the lease. The parameters of this relationship, including the ownership of various assets (such as the licenses and certificates of need), would presumably be defined in either the lease or the operating agreement. Appellant chose not to offer the operating agreement, full lease, or any testimony from an individual with personal knowledge of the ownership of the various assets necessary to legally operate a skilled nursing facility prior to the sale. In this way, we face a similar dilemma in the present appeal as we did in *UTSI*, where the parties chose to litigate the case in a manner that left important information out of the record that could have resolved the issues at hand. Id. at ¶36 ("Had UTSI presented the owner as a witness, it is likely that this issue could have been avoided altogether. *** Indeed, UTSI was on notice that this issue was looming given that the BOE raised its hearsay objection during the BOR proceedings. But UTSI evidently decided not to present the owner to testify during the BTA proceedings." (Citation omitted)). Consequently, we must piece together the details of the ownership of the relevant assets prior to the sale in order to properly discern which transferred as part of the transaction.

During the BOR hearing, appellant's witnesses explained that when a skilled nursing facility transfers, the rights of the operator are typically sold together with the facility because the licenses and personal property are necessary for its operation. In this case, the buyer was the operator, and must have had the legal rights to use those assets in order to continue operation. Who held legal title to the licenses and personal property would presumably be set forth more fully in the operating agreement or lease, which are not in our record. Nonetheless, the lease amendment that was submitted provides some insight into the operations of the property. Article VI of the Amendment to the Lease and Security Agreement (effective April 1, 2001) provides that the following language should be added:

> "Tenant may not sell transfer or assign to a non-Affiliate, or encumber, sublet, or permit to lapse, expire be suspended, or terminated, the nursing home license or provider agreement(s) without prior written consent of the Landlord, which may not be unreasonably withheld. In addition, Tenant may not sell, transfer or assign to a non-Affiliate, or encumber, or sublet the 'operating rights' or 'Certificate of Need' associated with the nursing home license to another person or business entity or organization without the prior written consent of the Landlord, which may not be unreasonably withheld."

This section prohibits the tenant, i.e., the operator/buyer/appellant, from transferring or terminating the nursing home license or provider agreement, operating rights, or certificates of need associated with the nursing home. This prohibition would only be necessary if the tenant had an ownership interest in those assets. If the landlord/seller owned, for instance, the certificates of need, the tenant/buyer would not have the authority to sell them and would not require a specific prohibition to be added to the lease. Rather, the lease would more likely require that the landlord was prohibited from taking such actions as they were necessary for the tenant's continued operation of the facility. Therefore, we find that these assets must have been owned by the tenant/buyer prior to April 5, 2011 and were not transferred with the real property.

Furthermore, as the operator of the property, or more accurately, the operator of the skilled nursing business that was conducted within the subject property, the buyer already owned the goodwill or business

value associated with the skilled nursing component of the going concern. Thus, because appellant already owned these intangible assets, it could not have purchased them from the seller and would have no need to compensate the seller for an intangible business value that it already owned. Accordingly, we find that an allocation of the purchase price to intangible goodwill or business value separable from the real property would be improper.

Finally, we consider the reduction for personal property. Pursuant to the purchase agreement, the seller was obligated to deliver an executed bill of sale and assignment, which was not submitted to the BOR or this board and could have definitively answered the question. Despite this, we find that there is adequate support to show that the seller owned some equipment that was utilized by the going-concern operating in the subject property, and likely transferred in the sale. Both Koon and the BOR relied on the Schedule D-1 from the seller's federal tax return for the period ending December 31, 2010. This document reflects that the net book value for equipment at the end of the year was $287,110. The BOE claims that this document shows that the buyer owned the equipment prior to the sale as it was presented as a tax filing from the buyer. Based on the other accounts for which depreciation was calculated, e.g., buildings, land improvements, leasehold improvements, etc., we find that this document must have been prepared in conjunction with the tax filings for the owner of the real property rather than the tenant. Therefore, we find that the record supports an allocation of $287,110 to non-realty assets.

Accordingly, we find that the sale price is best evidence of the value of the subject property, with $287,110 attributable to personal property and the remaining $7,202,890 attributable to the subject real property. We have allocated the sale price among parcels based on the auditor's initially-assessed values.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2011, 2012, and 2013, were as follows:

PARCEL NUMBER 010-196382-00

TRUE VALUE

$352,580

TAXABLE VALUE

$123,400

PARCEL NUMBER 010-198395-00

TRUE VALUE

$6,850,310

TAXABLE VALUE

$2,397,610

OHIO BOARD OF TAX APPEALS

NORTHLAND-4, LLC AND KNOWLEDGE UNIVERSE EDUCATION LLC, (et. al.),	CASE NO(S). 2016-136
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - NORTHLAND-4, LLC AND KNOWLEDGE UNIVERSE EDUCATION LLC
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, June 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is once again before the Board of Tax Appeals upon remand from the Supreme Court, which issued a decision and judgment entry in *Northland-4, L.L.C. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 257, 2018-Ohio-4303, vacating this board's December 13, 2016, decision and order . The court held that this board did not fully consider the appraisal evidence presented by the property owner, Northland-4, LLC ("Northland"), and its tenant, Knowledge Universe Education, LLC ("Knowledge Universe"), as rebuttal to the sale evidence relied upon by the appellee board of education ("BOE"). The court vacated this board's decision and remanded the cause for further proceedings, though the parties were not permitted to present new evidence on remand. Id. at ¶1.

The subject property is identified on the auditor's records as parcel number 025-010026-00 and consists of just over 2 acres of land improved with a roughly 9,900-square-foot building operating as a child care facility. For tax year 2014, the auditor initially assessed the subject's total true value at $1,100,000. The BOE filed an increase complaint with the board of revision ("BOR") seeking an adjusted value of $2,000,000, while Northland and Knowledge Universe filed a countercomplaint in support of the auditor's value. The BOR convened a hearing, at which the BOE relied on evidence of a November 2014 sale of the property for $2,000,000 to support its requested increase. Northland and Knowledge Universe did not contest the recency or arm's-length nature of the sale, arguing instead that it was unreliable evidence of value due to the lease in place at the time of the sale. In support of this argument, Northland and Knowledge Universe relied on a packet of documents but presented no testimony regarding the circumstances of the sale or motivations of the parties. Northland and Knowledge Universe provided the purchase agreement, settlement statement, deed, conveyance fee statement, lease, marketing materials related to the sale, the assignment and assumption of the lease, and an appraisal report dated October 2014 that was prepared by Integra Realty Resources. Northland and Knowledge Universe argued that the marketing materials demonstrated an intention to transfer the income stream in addition to the real property, while the Integra appraisal established that the $2,000,000 purchase price represented the "leased fee" value rather than the subject's unencumbered value in fee simple. The BOE objected to Northland and Knowledge Universe's documents as no one was present for authentication or to testify. The BOR issued a decision increasing the subject's value to $2,000,000, which Northland and Knowledge Universe appealed to this board.

This board convened a hearing, at which Northland and Knowledge Universe presented the testimony and written report of Kelly M. Fried, MAI, who opined that the total true value of the subject property was $1,290,000. Fried relayed information regarding her understanding of the sale and parties' motivations (including a summary of the lease in place at the time of the sale), to which the BOE objected based on Fried's lack of firsthand knowledge of the transaction. The BOE argued that Northland and Knowledge Universe failed to rebut the recency or arm's-length nature of the sale, and, therefore, the sale price is the best evidence of the subject's value. This board issued a decision accepting the sale, finding that Fried's statements about the sale were unreliable hearsay and declining to address the reliability of her appraisal and value conclusions because we found that Northland and Knowledge Universe had failed to show that the sale was not a recent, arm's-length transaction. The court vacated our decision to consider Fried's appraisal on the authority of *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio4415, and *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302.

In *Terraza 8*, the court held that pursuant to R.C. 5713.03, as amended by 2012 Am.Sub.H.B. No. 487, a recent, arms-length sale price constitutes the best evidence of a property's value, but such a sale price no longer *conclusively* determines that value as it did under prior law. "The statutory amendment thus allows taxing authorities to consider non-sale-price evidence—particularly evidence of encumbrances and their effect on sale price—in determining the true value of property that has been the subject of a recent arm's-length sale." Id. at ¶27. The court held that the proponent of the sale is not required to "affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." Id. at ¶32. Instead, the "best-evidence rule of property valuation *** creates a rebuttable presumption that the sale price reflected true value." Id. at ¶33. Because the best evidence of value rule is a rebuttable presumption (and no longer a conclusive determination), when the opponent of the sale presents evidence that purports to explain why the sale price did not reflect the value of the unencumbered fee-simple estate, this board must consider such evidence. Id. at ¶39. Accordingly, we must first determine whether the record contains sufficient evidence that a recent arm's-length sale of the subject real property took place, and if the answer is to the affirmative, whether the opponent of the sale has provided evidence that constitutes a more accurate value of the subject property. See *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018- Ohio-3855, ¶14. Rebuttal evidence may include an appraisal, such as the appraisal evidence presented in this case, to demonstrate that the sale was not

reflective of market value or provide affirmative evidence of value. *Sprit Master Funding*, supra, at ¶9, citing *Westerville City Schools*, supra.

As we turn to the evidence in the present appeal, we observe that the record contains not only the November 2014 sale and Fried's appraisal (which includes the marketing material in the addenda), but also the Integra financing appraisal prepared in conjunction with the transaction. The BOE made valid objections to the Integra appraisal at the BOR hearing because it was presented without testimony from the appraiser, and the value conclusions, therefore, will not be given any weight in our analysis. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21. Even without testimony from the author, however, where an appraisal contains that sufficient indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. Id. at ¶27. See, also, *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865, (a party may show that a purchase price reflected fair market value through an appraisal performed contemporaneous to the sale). We find this exception applies to the present appeal, and the information within the Integra appraisal, which sought to value the property as it sold, i.e., in fee simple subject to the existing lease, may provide some reliable insight into whether the sale price reflected the value of the fee simple estate.

Next, we note that the court did not comment on this board's rejection of Fried's reiteration of statements relayed to her by other people with respect to the transaction at issue in the present appeal. Without firsthand knowledge of the sale, Fried's assertions regarding the parties' motives are unreliable hearsay where she merely reiterated statements made to her by other individuals that did have knowledge of the sale. Ohio Evid. R. 801; 802; *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046. Additionally, while Fried's report and the information contained therein will be given their appropriate evidentiary weight, because the reliability of the sale is a key issue to be determined by this board, we will not abdicate our fact-finding authority to an expert witness with respect to this material fact. Id.

In determining the weight to be accorded the recent, arm's-length sale of a leased property, this board must consider not only whether the actual rent was at market rates, but also the creditworthiness of the tenant and whether the lease was a net lease, under which the tenant defrays the expenses relating to the real estate. *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶11. A review of the evidence establishes that all three of these factors were present in the sale of the subject property. The marketing information and both appraisals focus on the creditworthiness of the tenant and the net lease in place on the property. The marketing information describes the lease as "absolute corporate NNN" and details the quality of Knowledge Learning Corporation, which owns and operates the child care center located in the subject property. The Integra appraisal, which sought to value the property with the existing lease in place, made an upward adjustment to all comparable sales to account for the creditworthiness of the tenant in place at the subject property. Similarly, in using the sale of properties leased by Knowledge Learning Corporation within her sales comparison analysis, Fried made a downward adjustment from the sale price to account for the creditworthiness of the tenant in reaching the fee simple value. Furthermore, although the rental rate in place at the subject falls within the range of comparable leases, it is at the higher end of the range and the lower-than-market expenses result in a higher net operating income. Thus, we find that the record establishes that the purchase price likely included the value attributable to the lease independent of the real property itself and must determine whether Fried's appraisal provides a more reliable value than the sale of the subject property.

Turning to her appraisal, Fried determined that the highest and best use of the property was for continued commercial use and performed both the sales-comparison and income approaches to value, giving more weight to the sales-comparison approach. Fried looked for other properties with a similar use as the subject property, adjusting any sales of leased properties to account for the favorability of lease terms or creditworthiness of the tenant. In addition to her consideration of other similar properties, Fried included the sale of the subject, to which she applied a downward adjustment to remove those aspects that she considered attributable to the lease rather than the real property. These adjustments include the creditworthiness of the tenant, vacancy (because the property was 100% occupied at the time of the sale),

capitalization rate, and adjustment because the subject received above-market rent. Fried's adjustments were based on the analysis from her income approach, in which she determined that the subject's actual rental rate of $17.44 per square foot was considerably higher than the market rent of $13.50 per square foot. After applying a 5% vacancy rate and reducing for expenses, Fried concluded to a net operating income of $114,047. Fried then divided this number by 8.91% (8.75% capitalization rate plus 0.16% vacancy-weighted tax additur), for an indicated value of $1,280,000. Giving primary weight to the sales-comparison approach, Fried concluded that the value of the subject property was $1,290,000. We find that these conclusions are well-supported and that Fried's appraisal provides the best evidence of the subject's value as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2014, were as follows:

TRUE VALUE

$1,290,000

TAXABLE VALUE

$451,500

OHIO BOARD OF TAX APPEALS

CHRISTOPHER A. REEDER, (et. al.), Appellant(s), vs. MERCER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2019-545 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRISTOPHER A. REEDER
OWNER
1440 HAVEN HILL DR
DAYTON, OH 45459

For the Appellee(s) - MERCER COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Thursday, June 13, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On May 10, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a county board of revision decision. The documentation attached to appellant's notice of appeal demonstrates that neither the Mercer County treasurer, auditor, nor the board of revision considered the application or issued a decision concerning the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly,

this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PHILIPS MEDICAL SYSTEMS (CLEVELAND), INC. F/K/A PICKER X-RAY CORP., (et. al.),	CASE NO(S). 2019-25
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - PHILIPS MEDICAL SYSTEMS (CLEVELAND), INC. F/K/A PICKER X-RAY CORP.
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

MAYFIELD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, June 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered upon the appellant property owner's motion to remand with instructions to accept a stipulated value. Neither the county appellees nor the appellee board of education ("BOE") have responded to the motion.

[2] This matter began with the filing of a tax year 2017 complaint by the property owner. The owner had previously filed a complaint for tax year 2015, which ultimately concluded on appeal to this board with a stipulation of value by all parties for tax years 2015 and 2016. *Philips Medical Systems (Cleveland), Inc. f/k/a Picker X-Ray Corp. v. Cuyahoga Cty. Bd. of Revision* (Dec. 1, 2017), BTA No. 2017-347, unreported. Although 2017 was not the year of a statutory revaluation or update of values in Cuyahoga County, the

county's property record card for one of the subject parcels (parcel number 822-07-002) reflects an increase in value for tax year 2017. As a result of the change, the owner filed a new complaint for tax year 2017; the BOE filed a countercomplaint.

[3] The Cuyahoga County Board of Revision ("BOR") dismissed the complaint and countercomplaint, stating in its oral hearing journal summary:

> Board finds it has no jurisdiction to hear the complaint/countercomplaint as it is a 2nd filing in the triennium. Complainant and the Board of Education filed complaints for the 2015 tax year. The parties now argue because an abatement on a portion of the total valuation expired in tax year 2017, effectively changing the taxable value of the property during the triennium (but not the total valuation of the property), they are entitled to file a complaint in 2017. No legal precedent for this position was submitted by the parties. The parties provided a history of the tax litigation for this property and indicated they were trying to implement a stipulation for the 2017 tax year that the parties had agreed to as a result of the 2015 litigation. Board finds the removal of the abatement is not a change in value which would serve as an exception to the statutory prohibition of filing multiple complaints within the same triennial period. Dismissed.

Statutory Transcript at Ex. E. The owner thereafter appealed to this board and filed the present motion.

[4] The statutory scheme for filing complaints against value generally only permits one complaint filing per three-year interim period, i.e., the time between a sexennial revaluation and a triennial update, or an update and a revaluation. R.C. 5715.19(A)(2). Exceptions to this general rule include situations when the fiscal officer has changed the value within an interim period. See *JLP-Harvard Park LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 3, 2012), BTA No. 2011-K-2225, unreported; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 13AP-764, 2014-Ohio-2145.

[5] The record before us contains little information about the change in value from 2016 to 2017. From a review of the fiscal officer's property record card, we can discern that parcel number 822-07-002 was granted a community reinvestment area ("CRA") exemption from 2002 through 2016 for the building on the parcel, which was valued in 2003 at $7,591,000. Statutory Transcript at Ex. C. It appears that the expiration of the exemption was the reason for the increase in the taxable value of the parcel for tax year 2017.

[6] A review of CRA exemptions is helpful to our consideration of the issue raised in this matter. The Supreme Court generally explained the CRA exemption in *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231 (2001), at 232-233:

> In R.C. 3735.635 et seq., the General Assembly has instituted a property tax incentive program that promotes the construction and remodeling of commercial, industrial, and residential structures in CRAs. Before property may be exempted from taxation under this program, the legislative authority must also designate a housing officer to administer the CRA program. *Id.* New or remodeled residential, commercial, or industrial property located within a CRA is eligible for a partial or total tax exemption. *Id.*
>
> To obtain an exemption for new or remodeled property located in a CRA, the owner must file an application with the housing officer designated by the legislative authority. R.C. 3735.67. *** After the housing office has determined that all the requirements for exemption have been met, he or she forwards the application to the county auditor with information regarding the percentage and duration of the exemption. R.C. 3735.67(C).

[7] Once the housing officer sends the certification to the county auditor (or fiscal officer), the county auditor then has a "a duty to enter on [the] tax-exempt property list those properties" which have been exempted by the housing officer. *State ex rel. Lorain v. Stewart*, 119 Ohio St.3d 222, 2008-Ohio-4062, ¶30. Once the term of the CRA exemption has expired, the county auditor strikes the property from the exempt

list and reenters it on the taxable list. R.C. 5713.08(A).

[8] It appears, in this case, that the property which was subject to the CRA exemption from 2002 to 2016 was reentered on the tax list for 2017 due to the expiration of the exemption. This appears to account for the increase in the taxable value of parcel number 822-07-002 for tax year 2017. While the property was on the exempt list, a complaint against its valuation could not have been filed. R.C. 5715.19(A)(1)(d) provides that a complaint may be filed against "[t]he determination of the total valuation or assessment of any parcel *that appears on the tax list* ***." (Emphasis added.) See also *Kuntz 2016, L.L.C. v. Montgomery Cty. Auditor*, 2nd Dist. Montgomery No. 28038, 2018-Ohio-4635. Tax year 2017 is therefore the first year in which a complaint could properly be filed against the previously exempt portion of parcel number 822-07-002. We find the appellant property owner's tax year 2017 complaint was not an improper second filing and was permissible under R.C. 5715.19.

[9] The appellant's motion to remand is therefore well taken. However, this board lacks authority to direct the board of revision to accept the stipulation of value on remand. R.C. 5717.03(F). See also *Ganter v. Franklin Cty. Bd. of Revision* (Interim Order, May 10, 1996), BTA No. 1995-A-298, unreported; 2018 Ohio Atty.Gen.Ops. No. 2018-011. Accordingly, we hereby remand this matter to the Cuyahoga County Board of Revision with instructions to vacate its decision dismissing the complaint and countercomplaint, and to conduct further proceedings.

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2018-1088
vs.	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

AWAN, LLC
4668 MARS ROAD
UNIONTOWN, OH 44685

Entered Wednesday, June 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 67-13925, for tax year 2017. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property operates as a gas station with a roughly 1,288-square-foot convenience

store. The fiscal officer initially assessed the subject's total true value at $78,040. The BOE filed a complaint with the BOR seeking an increase in value to $325,000 in an arm's-length transaction. At the BOR hearing, the BOE submitted the deed, conveyance fee statement, and CoStar report as evidence that the subject property sold in January 2017 for $325,000. The appellee property owner did not contest the validity of the sale but testified that the sale price included consideration for various non-realty items, including the pumps and tanks, canopy, store inventory, liquor license, and business value. The property owner did not provide any documentation to corroborate this assertion, such as a purchase agreement, but gave an opinion of value for each of the non-realty items, claiming that the value of the real property was about $150,000. The property owner also described the negotiation between himself and the seller. The BOR issued a decision increasing the initially-assessed valuation to $125,000 based on the sale and testimony, which led to the present appeal. None of the parties appeared before this board to present additional evidence or testimony.

There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. This burden may be satisfied through the submission of even unauthenticated sale documents if there is no real dispute about the basic facts of the sale. Id. at ¶¶14-15. See, also, *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412, ¶18. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, there is no dispute that the subject property transferred via a recent, arm's-length transaction. The only question is the proper sale price attributable to the real property. The property owner argues that in addition to the purchase of the subject real property, the $325,000 sale price includes consideration for personal property, such as inventory, business fixtures, and business value. The property owner, however, provided no documentation to corroborate this self-serving testimony. Accordingly, we find that no allocation to items other than the subject real property is appropriate.

Even if we were to find that the property owner proved that the sale price included consideration for personal property, we would find that it failed to provide sufficient corroborating indicia of the value of the personal property to reduce the portion of the sale price attributable to real property. If this board determines that the record contains adequate support to find that any of the consideration paid in a bulk sale was for assets other than real estate, we must then allocate the purchase price to items other than real property. *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. The party advocating for a reduction below the full sale price due to an allocation of other assets bears the burden of showing the propriety of such action and must provide "corroborating indicia" of the appropriate allocation. *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶17. See, also, *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258. The court has clarified that even without negotiation of the allocation of the sale price among the parties contemporaneous with the time of the sale, an after-the-fact appraisal may be used to show the proper reduction of the overall sale price to account for those non-realty items. *Arbors E.*
, supra, at ¶23, citing *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶35. If the proponent of an allocation fails prove the appropriate reduction, absent unusual "complexities of the sale," "the full sale price constitutes the

property value." *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶11.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$325,000

TAXABLE VALUE

$113,750

OHIO BOARD OF TAX APPEALS

QCA-PARMA, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2017-2169
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - QCA-PARMA, LLC
Represented by:
PAUL M. JONES, JR.
PAUL JONES LAW, LLC
435 EAST MAIN STREET
SUITE 220
GREENWOOD, IN 46143

For the Appellee(s) - CUYAHOGA COUNTY
BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING
ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET,
8TH FLOOR
CLEVELAND, OH 44113

PARMA CITY SCHOOLS
BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE &
SEED LLP
1111 SUPERIOR AVENUE,
SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, June 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered by this board upon a notice of appeal by the appellant property owner, QCA-Parma LLC ("QCA"), from a decision of the Cuyahoga County Board of Revision

("BOR") determining the value of parcel number 455-10-004 for tax year 2016. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, the record of the hearing before this board ("H.R."), and the parties' written arguments. The subject property was built in 1994 and is operated as an Outback Steakhouse. For tax year 2016, the fiscal officer valued the property at $1,433,800. The Parma City School District Board of Education ("BOE") filed a complaint against the valuation seeking an increase to $3,830,100, based on a sale of the property for that amount in November 2016. QCA did not file a countercomplaint. Though its counsel entered an appearance in the proceedings, it was denied a continuance of the BOR hearing and did not attend. Counsel for the BOE did attend the hearing and presented the conveyance fee statement and limited warranty deed demonstrating the sale of the subject property from New Private Restaurant Properties, LLC, to LCN BLM Athens (Multi) LLC, in November 2016 for $3,830,142. In the absence of any evidence rebutting the utility of the sale price in valuing the property, the BOR found it to be the best evidence of value and increased the value of the property to $3,830,100.

QCA thereafter appealed to this board. At this board's hearing, and through written argument, QCA argues that the November 2016 sale was a sale-leaseback transaction and therefore not arm's-length and not appropriate for valuing the property per the Supreme Court's decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578 ("State Farm"). The BOE also appeared at this board's hearing, and provided additional evidence (conveyance fee statement and deed) of a second sale of the subject property, from LCN BLM Athens (Multi) LLC to QCA, in May 2017 for $4,462,642. QCA argues this second sale was subject to an above-market lease that was negotiated in the context of the prior sale-leaseback transaction and therefore is not indicative of fair market value.

Instead, QCA advocates for valuing the property based on an appraisal report prepared by Richard G. Racek, Jr., MAI, which opined a value of $1,400,000 as of tax lien date using the sales comparison and income capitalization approaches to value.

We begin our review by acknowledging that the best evidence of a property's true value in money is a recent, arm's-length sale of the property. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415; *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977). When a property has been the subject of two arm's-length sales within a reasonable length of time of tax lien date, the sale occurring closer in time to tax lien date is the best evidence of value. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, ¶20. We therefore begin our review of the two sales with the November 2016 sale to LCN BLM Athens (Multi) LLC, which occurred eleven months after tax lien date. QCA argues the November 2016 sale was a sale-leaseback transaction, as evidenced by Mr. Racek's testimony (and statements in his report) to that effect, and the fact that the same person (Ronda L. Stoker) signed as the agent of the seller in the November 2016 sale and as agent of the lessee (Outback Steakhouse of Florida, LLC) in a memorandum of lease dated the same day. At the outset, we reject any reliance on Mr. Racek's statements about the circumstances of the sale as hearsay. In *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, the Supreme Court found this board properly rejected reliance on an expert appraiser's statements about the relationship between the parties to a sale. While the court acknowledged that "an expert appraiser must at times rely on hearsay evidence to perform his or her job," this board may reject testimony where "an appraiser acts merely as a conduit of information concerning material facts about the subject property itself ***." Id. at ¶37-38. Mr. Racek testified that he had no firsthand knowledge of the nature of the sale transaction. H.R. at

21. We therefore give no weight to his testimony about the arm's-length nature of the November 2016 sale.

The BOE argues that the documents pointed to by QCA likewise fail to establish that the November 2016 sale was a sale-leaseback transaction. It notes that Ms. Stoker signed the memorandum of lease on behalf of Outback Steakhouse of Florida, LLC, whose relationship to any of the entities that owned the property at any point during 2016 and 2017 is unknown. While we acknowledge that the lessee under the lease (Outback Steakhouse of Florida, LLC) is not identical to the seller in the November 2016 sale (New Restaurant Properties LLC), the documents certainly demonstrate that Ms. Stoker was involved on behalf of both the seller and the tenant in the transaction. We further note that Mr. Racek's appraisal report is directed to Ms. Stoker, Senior Director of Real Estate Asset Management for Bloomin' Brands, Inc. H.R., Ex.

A. Also notable is that both the limited warranty deed transferring the property and the memorandum of lease were recorded on November 7, 2016 at 3:17:21 PM. Given the evidence presented, we find the November 2016 sale was a sale-leaseback transaction.

The Supreme Court in *State Farm*, supra, held that "the sale aspect of a sale/leaseback does not qualify as an arm's-length transaction under R.C. 5713.03." Id. at ¶28. It explained that "[a] sale/leaseback inherently involves an overall contractual relationship between the parties that differs from the model of an unrelated seller negotiating with an unrelated buyer." Id. at ¶20. The recorded sale and lease documents demonstrate that such a relationship existed between the buyer and seller in the November 2016 transaction. We therefore find it is not an arm's-length transaction and should not be used to value the property as of tax lien date.

The *State Farm* court stopped short, however, of holding that the sale *following* the sale/leaseback transaction would also not be arm's-length. In analyzing the sale *following* the

sale/leaseback transaction, the court noted that the issue becomes "whether the lease emanating from the sale/leaseback [deprives] the subsequent sale of its arm's-length character ***." Id. at ¶26. Such question was decided under the law of *Berea* in *State Farm*; because this matter concerns tax year 2016, after the General Assembly overrode *Berea* by amending R.C. 5713.03, we proceed to consider the sale *following* the sale/leaseback, i.e., the May 2017 sale, under the court's decision in *Terraza 8*. Once the BOE has presented basic documentation of the sale, as it has here through the presentation of the conveyance fee statement and deed, QCA has the burden of going forward with rebuttal evidence "showing that the price did not, in fact, reflect the property's true value." *Terraza 8*, supra, at ¶32.

QCA argues that the lease in place at the time of the May 2017 sale was above market, and, therefore, the sale subject to that lease is not indicative of fair market value. Initially, we reject QCA's argument that the mere fact that the lease may have been negotiated in the context of a sale/leaseback transaction negates the utility of the sale in valuing the property as of tax lien date, seventeen months prior. In arguing the lease rate was above market, QCA relies exclusively on Mr. Racek's testimony and report. The BOE notes with importance that no one personally involved with the owners or the tenant testified about the details of the lease terms. The only evidence in the record before us of the actual lease is the Memorandum of Lease included in the addenda of Mr. Racek's report, which contains only the lease term; it does not specify any lease rate. In the narrative portion of his report, Mr. Racek states that the lease in place has an annual rental rate of $39.66/SF of net rentable building area (6,132 square feet). In his income approach to value, Mr. Racek opined a market rental rate of $20/SF of gross building area (6,224 feet). He based his opinion on actual triple net leases of $9.75/SF to $19.76/SF, and asking rates of $14/SF to $22/SF. H.R., Ex. A at 40.

The BOE argues that QCA has failed to meet its burden to rebut the utility of the May 2017 sale by failing to present any proper evidence of the lease in place at the time of sale. It argues Mr. Racek's statements about the lease are hearsay and therefore not reliable. See *Southwestern City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2016-390, unreported. We agree. Just as the court in *Hilliard City Schools* found this board properly rejected an appraiser's statements about the nature of the relationship between parties to a sale, here, Mr. Racek's statements concern a material fact about the subject itself – the lease rate and terms. *Hilliard City Schools*, supra, at ¶38. The burden is on QCA, as the opponent of the May 2017 sale price to prove that the lease in place at the time of sale did not reflect market terms. *Terraza 8*, supra, at ¶34. It is axiomatic that to make such showing, QCA must demonstrate at what lease terms the subject transferred. It has not done so. We find QCA has failed in its burden to prove that the lease in place at the time of sale was not on market terms by failing to provide competent evidence of the actual lease in place at the time of sale.

However, we must still weigh QCA's appraisal evidence to determine whether the sale price is the best evidence of the property's value. Mr. Racek opined a value of $1,400,000 as of January 1, 2016, using the sales comparison and income capitalization approaches to value. In his sales comparison approach, upon which he placed significant weight, Mr. Racek compared the subject property to seven properties located throughout northeastern Ohio that sold between October 2013 and January 2017 for unadjusted prices of $108.84/SF to $239.78/SF. After making adjustments to the comparables, Mr. Racek estimated the subject property would sell in the fee simple interest for $225/SF of gross building area, or $1,400,000 rounded. He also performed an income capitalization approach, using a gross potential income of $124,480 (compared to the purported contract income of $243,214), 5% vacancy and credit loss, 3% for

management and administrative expenses, $0.50/SF replacement reserve, and a capitalization rate of 8% based on four comparable sales, and determined a value of $1,394,950, rounded to $1,400,000.

The BOE argues that Mr. Racek's opinion of value is not probative of the subject property's value because he relied on comparables too dissimilar from the subject property. It notes the large amount of adjustments made to the sale comparables, as a result of Mr. Racek relying on vacant ("dark") properties rather than those that sold subject to a lease. BOE Brief at 9-10. The BOE also faults Mr. Racek for relying on second and third-generation leases, rather than first-generation leases, in light of the fact that the subject property is still occupied by Outback Steakhouse – its original occupant. It further notes the actual leases upon which Mr. Racek relies were negotiated significantly prior to tax lien date, including as early as March 2010. Given these dissimilarities, the BOE argues Mr. Racek's appraisal is not probative of the value of the subject as it existed on tax lien date.

We agree with the BOE's criticisms. QCA asks us to disregard a sale of the subject property in favor of an appraisal based on the assumption the property was vacant that relies on the sales of vacant buildings and lease negotiated years prior to the tax lien date at issue. Such dissimilarities lead us to conclude that Mr. Racek's opinion of value does not reflect the subject property, as it existed, at the time of sale. We find Mr. Racek's appraisal report does not rebut the presumption that the sale of the property in May 2017 is the best evidence of value.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$4,462,640

TAXABLE VALUE

$1,561,920

OHIO BOARD OF TAX APPEALS

KARMA MATERIALS AND ASPHALT, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-304 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KARMA MATERIALS AND ASPHALT, LLC
Represented by:
AUDRA ZARLENGA
OWNER
KARMA MATERIALS AND ASPHALT LLC
37850 JACKSON ROAD
MORELAND HILLS, OH 44022

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

GARFIELD HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
SARAH J. MOORE
ATTORNEY AT LAW
FISHER & PHILLIPS LLP
FISHER & PHILLIPS LLP
200 PUBLIC SQUARE, SUITE 4000
CLEVELAND, OH 44114

Entered Thursday, June 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees and the board of education jointly move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion, despite the passage of more than fourteen days since it alleges it received the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HELEN L. KASPER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-2125
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - HELEN L. KASPER
Represented by:
LARRY J. KASPER
4267 SHIRE COVE RD
HILLIARD, OH 43026

For the Appellee(s) - FRANKLIN COUNTY
BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING
ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET,
20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, June 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 050-003139-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and appellant's written argument.

The subject property consists of just under 0.5 acres of land improved with a roughly 2,800 square-foot, single-family home. The auditor assessed the subject's total true value at $265,800 after appellant participated in an informal review during the countywide

reappraisal process, during which the auditor's representative adjusted the characteristics of the property to reflect that the subject was in "poor" condition. Appellant filed a complaint with the BOR seeking a reduction in value to $220,000. Appellant provided a value analysis prepared by her husband, Larry J. Kasper, CPA, CVA, CBA, based on sales activity in the subject's subdivision, which he used to conclude to a value for the subject if repairs were made and to extrapolate market trends for the subdivision. Based on this analysis, Mr. Kasper concluded that the value of the property was $220,000 as of December 31, 2017. The BOR convened a hearing, at which Mr. Kasper testified regarding the condition of the property as well as their opinion of value for the subject property. In part, Mr. Kasper criticized the methodology utilized by the auditor's office to develop the assessed value and argued that it did not adequately consider the necessary repairs, including structural problems and other issues from the construction of the property. Mr. Kasper discussed several repairs that had been made since January 1, 2017 as well as additional estimated repairs, providing photographs and copies of various estimates. Mr. Kasper also submitted a letter from a realtor that expressed his belief that the subject was in poor condition and outlined several updates that would be necessary (for a total cost of roughly $110,000) to sell the property, and if made, would result in a value of $335,000. Mr. Kasper explained that this realtor's letter, his valuation analysis, and the value following the informal review failed to take into consideration major issues that were not yet known when they were prepared, including significant structural issues and repairs to an electrical box. Although Mr. Kasper acknowledged he was not a certified residential appraiser, he explained that his certifications include as a (retired) CPA (Certified Public Accountant) from the State of Ohio, CVA (Certified Valuation Analyst) from the National Association of Certified

Valuation Analysts, and CBA (Certified Business Appraiser) from the Institute of Business Appraisers.

The BOR issued a decision maintaining the initially assessed valuation, which appellant appealed to this board. Appellant submitted an appraisal report opining a value of $240,000 as of January 1, 2017 with her appeal. At the merit hearing before this board, appellant again relied on testimony and analysis from Mr. Kasper, in addition to estimates and receipts documenting repairs, more information regarding the informal reviewer's opinions, and an updated letter from the realtor opining a value range between $220,000 and $230,000 based on the condition when he initially viewed the property in March 2018. Mr. Kasper again testified regarding the poor condition of the subject property and his belief that the properties utilized by both the county and the appraiser he and his wife hired did not properly take the poor condition into account when forming their opinions of value. For that reason, Mr. Kasper claimed that the comparable properties they utilized were not truly comparable to the subject property. Mr. Kasper also described his experience not only as a professional business appraiser utilizing an analytical approach, but also his knowledge based on the practical aspects of buying, selling, and remodeling real property.

In the present appeal, appellant's burden was to come forward with evidence not only to show that is the auditor's value incorrect, but also to establish that her proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, which may be in the form of a non-expert owner's opinion of value. Id. at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis

for the owner's opinion fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

Appellant primarily relied on evidence of negative conditions to support her requested reduction. While we acknowledge that the subject may need various repairs or updates, she has failed to establish the specific extent to which these issues affect the subject's value, if at all. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz*, supra, at ¶17. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). Additionally, it appears that the auditor did take the subject's condition into account as the property record card and the informal reviewer's notes reflect that the auditor's value is based on the property's "poor" condition and correct number of rooms.

Appellant has set forth opinions of value from both Mr. Kasper and a realtor in an attempt to demonstrate the impact that the property's condition has on the subject property, asserting that neither the auditor's informal reviewer nor the appraiser she hired properly considered the necessary repairs. With respect to the realtor's letters, even if we ignore that they were presented without testimony from their author, this board typically has rejected opinions from realtors because, while they may have extensive training in their field and develop some appraisal expertise, as a group, real estate sales people "typically do not consider all the factors that professional appraisers do." *Poenisch v. Franklin Cty. Bd. of Revision* (Jan. 23, 2015), BTA No. 2014-961, unreported, citing The Appraisal of Real

Estate (13th Ed.2008) at 8-9. Furthermore, though it can be understood from the letters that the realtor believed that the subject's condition was an issue, we cannot review the basis for the value conclusions. As such, these opinions are not reliable evidence of the subject's value.

Mr. Kasper also performed a value analysis of the property and attempted to value the property using a dollar-for-dollar reduction to account for the repairs. The court has rejected this approach as costs do not necessarily correlate to value. *Throckmorton*, supra; *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). The remaining analysis from Mr. Kasper is based on either an adjustment to values set by the auditor or the sales of properties in the subject's neighborhood based on the average price per square foot without adjustments for other dissimilarities among the properties. Neither of these approaches provide a reliable indication of value. *Schutz*, supra.

Finally, we find that the appraisal report prepared for the present appeal is not competent and probative evidence of value and give it no weight in our value determination. Initially, we observe that this appraisal report (like the realtor's letters) constitutes unreliable hearsay because it was presented without testimony from the appraiser, and the value conclusions should not be given any credence in our analysis. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21 ("*Team Rentals*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. The appraisal of real property is not an exact science and is instead simply an opinion, the reliability of which depends upon the basic competence, skill, and ability

demonstrated by the appraiser. *In re Houston*, 12th Dist. Madison No. CA2004-01-003, 2004-Ohio-5091; *Akron Natl. Bank & Trust Co. v. Freed & Co.*, 9th Dist. Medina No. 957, unreported (Aug. 20, 1980); *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. Even without testimony from the author, where an appraisal contains sufficient indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. In this case, however, we find that the appraisal fails to meet this standard, as Mr. Kasper has questioned the comparability of the properties upon which the appraiser relied and the extent to which he considered the condition of the property as it existed on the tax lien date. In addition to the absence of direct testimony about the preparation of the appraisal, unlike the appraisal in *Team Rentals*, there is no evidence that any individual or entity has relied on the appraisal to establish the subject's value. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). With unanswered questions at the center of the appraiser's analysis and claims from Mr. Kasper that the appraisal does not accurately reflect the condition of the property on the tax lien date, we are unable to rely on any aspect of his report. As such, we find that appellant failed to meet her burden to prove an alternative value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject

property, as of January 1, 2017, were as follows: TRUE VALUE

$265,800

TAXABLE VALUE

$93,030

OHIO BOARD OF TAX APPEALS

GRANDVIEW HEIGHTS HOLDINGS, LLC, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2018-1945
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GRANDVIEW HEIGHTS HOLDINGS, LLC
Represented by:
REBECCA KELLEY
FISHER, DOUGLAS & KELLEY, LLC
600 EAST RICH STREET
COLUMBUS, OH 43215

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Thursday, June 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") moves to dismiss this matter on the basis that the notice of the appeal was not timely filed with the board of revision ("BOR"). This matter is considered upon the motion, the statutory transcript certified by the county board of revision, and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that the BOR decision was mailed on October 12, 2018. Although appellant timely filed a notice of appeal with this board, a notice of the appeal was not received by the BOR until November 16, 2018, i.e., thirty-five days after the mailing of the decision.

To the extent that appellant's response argues that parties were timely notified by this board, we note that docketing letters sent by the Board of Tax Appeals do not satisfy the requirement of R.C. 5717.01 that an appealing party file a notice of appeal with a county board of revision.

Austin Co. v. Cuyahoga Cty. Bd. of Revision, 46 Ohio St.3d 192 (1989). See, also, *Rumora v. Ashtabula Cty. Bd. of Revision* (Mar. 30, 2001), BTA No. 2000-G-970, unreported. Appellant also argues that the BOE's motion is untimely. However, the subject matter jurisdiction of this board may be raised at any time during the pendency of the appeal. See *Painesville v. Lake Cty. Budget Comm.*, 56 Ohio St.2d 282, 284-285 (1978), citing *Gates Mills Investment Co. v. Parks*, 25 Ohio St.2d 16, 19-20 (1971) ("The failure of a litigant to object to subject-matter jurisdiction at the first opportunity is undesirable and procedurally awkward. But it does not give rise to a theory of waiver, which would have the force of investing subject-matter jurisdiction in a court which has no such jurisdiction."); *National Tube Co. v. Ayres*, 152 Ohio St. 255 (1949), paragraph one of the syllabus ("The Board of Tax Appeals has control over its decisions until the actual institution of an appeal or the expiration of the time for an appeal.").

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DOUGLAS FELDMAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-467
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DOUGLAS FELDMAN
4748 HAVEN CREST LANE
CINCINNATI, OH 45248

For the Appellee(s) - HAMILTON COUNTY
BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Thursday, June 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the

Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MICHAEL AND PATRICIA BARLOW, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2159 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL AND PATRICIA BARLOW
Represented by:
MICHAEL BARLOW
1327 OBSERVATORY DRIVE
CINCINNATI, OH 45208

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, June 24, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellants appeal a decision of the board of revision ("BOR"), which denied an application for remission of late payment penalty assessed on the real property tax bill for the second half of tax year 2017. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

The appellants filed an application for remission of the late payment penalty, which asserted that they failed to pay the property tax bill for the second half of tax year 2017, which was due on or before June 20, 2018, because they did not receive it. They asserted that they had not received a property tax bill in the mail for several years. The treasurer, auditor, and BOR determined that the application should be denied because the appellants had been provided

ample notice of the date on which property tax bills were due, by way of the actual property tax bill and publication on the Internet and newspaper. This appeal ensued. By way of the notice of appeal, the appellants assert that their property tax bill payment was processed on June 21, 2018 instead of the day on which they actually made such payment, on June 20, 2018. Neither the appellants nor the county appellees availed themselves of the opportunity to submit evidence at a hearing before this board.

On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission of the real property tax late payment penalty. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

We begin our analysis by noting that none of the parties requested a hearing before this board. As a result, the record is void of any evidence to support the assertions contained in the appellants' application for remission and notice of appeal. We have previously held that a notice of appeal "is not an adequate substitute for reliable documentary and testimonial evidence. The Notice of Appeal merely constitutes unsworn, unproven statements, claims and allegations." *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported, at 3. See also *Powderhorn v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2007-L-071, 2008-Ohio-1024. Though there is no evidence to support the appellants' assertions, we proceed to address the merits of their arguments.

Based upon our review, for a number of reasons, we find that the appellants have failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty. R.C. 5715.39 provides the guidelines to determine when real property tax, late payment penalties shall be remitted. Because the appellants allege that they did not receive the property tax bill for the second half of tax year 2017, we consider whether the appellants qualify

for remission of the late payment penalty under R.C. 5715.39(B)(2), which provides, in relevant part, that the late payment penalty shall be remitted if a property tax bill was not received and the taxpayer "made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax." First, there is no evidence that the appellants did not receive the property tax bill for the second half of tax year 2017. Second, even if the appellants did not receive the property tax bill, "[f]ailure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." R.C. 323.13. Third, despite assertions otherwise, the record demonstrates that the property tax bill payment was made at approximately 8:07 AM on June 21, 2018. As such, we find that the appellants do not qualify for remission of the late payment penalty under R.C. 5715.39(B)(2).

Based upon the foregoing, we affirm the decision to deny the appellants' request for remission of the late payment penalty for the property tax bill for the second half of tax year 2017.

OHIO BOARD OF TAX APPEALS

YALE HOMES, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-801, 2018-802
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - YALE HOMES, LLC AND 81 LIBERTY LLC
Represented by:
CHRIS KNOPPE
PO BOX 732
WORTHINGTON, OH 43085

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, July 1, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] These consolidated matters come before this board upon two notices of appeal from decisions of the Franklin County Board of Revision ("BOR").

[2] At the outset, we note that, although appellants requested hearings before this board at which to present new evidence, no one appeared on behalf of appellants at such hearings. Following the scheduled hearing, Sean Knoppe, who identified himself as a member of appellant property owner Yale Homes LLC, notified this board in writing that appellants'

failure to appear at the hearing was inadvertent and due to the sudden departure of an employee. Mr. Knoppe asked this board to consider these matters upon his affidavits and attached documentation. The appellee Board of Education of the Columbus City School District ("BOE") moved to strike Mr. Knoppe's filing, arguing that, because Mr. Knoppe is not an attorney, he committed the unauthorized practice of law by making the filing. Further, the BOE asks us to exclude any evidence not previously submitted to the BOR, as provided in R.C. 5715.19(G).

[3] Upon review of the filing and the BOE's motion, we agree that Mr. Knoppe is not authorized to represent the appellant property owners and hereby strike the filing from the record of this matter. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶19, fn.2 (striking a brief filed by a non-attorney on behalf of a limited liability company and indicating such filing constituted the unauthorized practice of law). Further, even if such filing had been properly made, this board's review is limited to evidence contained in the statutory transcripts certified by the auditor pursuant to R.C. 5717.01, and those documents properly presented at a hearing before this board. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). As this board noted in *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported, at 3, "[e]vidence presented at a hearing is accepted only upon conditions designed to insure its reliability. Appellants must first be sworn on oath. Their sworn testimony is then scrutinized and subjected to cross-examination. Documentary evidence is also subjected to the scrutiny of the parties and their counsel." See also *Pi in the Sky, L.L.C. v. Testa*, Slip Opinion No. 2018-Ohio-4812, ¶25. The BOE's motion to strike is hereby granted.

[4] We proceed to determine these appeals upon the notices of appeal, the statutory transcripts, and the arguments of counsel for the BOE at this board's hearing.

[5] Appellant Yale Homes LLC appeals a decision of the BOR determining the value of parcel numbers 010-020091, 010-029252, and 010-052844, for tax year 2017. The parcels are all

improved with residential dwellings which are used as rentals by Yale Homes. The auditor initially valued the parcels at a total of $97,400, as follows: $60,600 (p# 010-020091), $29,000 (p# 010-029252), and $7,800 (p# 010-052844) for tax year 2017. The BOE filed a complaint seeking an increase in the value of each parcel, for a total value of $170,000 based on the sale of the properties for that amount in September 2017. Yale Homes filed a countercomplaint seeking to retain the auditor's initial values, arguing that the sale was not arm's-length and was a transfer of multiple parcels "that is not indicative of the values of any one parcel." At the BOR hearing, the BOE presented the general warranty deed and conveyance fee statement as evidence of the sale. No one appeared at the hearing on behalf of Yale Homes. The BOR ultimately increased the values of the parcels in accordance with the $170,000 sale price, allocating the sale as follows: $105,400 (p# 010-0290091), $51,000 (p# 010-029252), and $13,600 (p# 010-052844).

[6] Appellant 81 Liberty LLC appeals a decision of the BOR determining the value of parcel number 010-025606 for tax year 2017. The auditor had initially valued this property at $74,400. Again, the BOE filed an increase complaint based on a sale of the property for $150,000 in March 2017. 81 Liberty LLC filed a countercomplaint seeking a decrease in value to $52,600, explaining that the property is now a vacant lot and was purchased "with hopes to renovate/salvage, however the property could not be salvaged and was demolished." The owner attached pictures and a copy of the demolition permit application. Again, no one appeared at the BOR hearing on behalf of the owner. The BOE did appear, through counsel, and submitted a copy of the conveyance fee statement and deed evidencing a sale of the property from Barry W. Epstein, Administrator of the Estate of Stella M. Elliott, to Supra Investments, LLC in March 2017 for $150,000, and a quit claim deed transferring the property from Supra Investments LLC to 81 Liberty LLC, which appears to be a related entity. The BOR accepted the March 2017 sale price as the best evidence of value and increased the value of the parcel to $170,000. In its notice

of appeal to this board, the owner again argues that the value of this parcel should be based only on its land value and asks that it be valued in accordance with the auditor's 2017 land value of $52,600.

[7] As the appellant in this matter, the burden is on the owner "to demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. Even where a board of revision has revised an auditor's initial valuation, this board must independently determine value, giving no presumption of validity to the board of revision's determination. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. Further, the factors attending whether a sale price establishes value is determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[8] Here, the BOE presented evidence of two facially arm's-length transfers as support for its original increase complaints. The best evidence of a property's value is a recent, arm's-length sale of the property between a willing buyer and a willing seller. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415; *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. By presenting the basic documentation of the sales, i.e., the conveyance fee statements and deeds, the BOE met its relatively light initial burden to establish the presumption that such sales meet "all the requirements that characterize true value." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14, quoting *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. Of Revision*, 78 Ohio St.3d 325, 327 (1997). The burden is on the owners in these matters to rebut such presumption and demonstrate the sales did not reflect the values of the properties on tax lien date.

[9] Appellants have failed to properly present any evidence to rebut the sales. Although Yale Homes stated on its complaint that the sale of the three parcels in September 2017 did not

reflect the values of each individual property, it provided no basis for such assertion. It appears the BOR allocated the total $170,000 sale price to each of three parcels based on the ratio of the auditor's initial value for each parcel. Such method of allocation has been found appropriate by the Supreme Court in the absence of an alternate allocation. *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. We find no error in the BOR's allocation, nor in its acceptance of the sale price as the best evidence of value.

[10] For the remaining property, 81 Liberty LLC indicated on its complaint the property was purchased with the hope of renovating the improvements, but ultimately it was determined they were not salvageable. The record clearly indicates that, although the improvements were ultimately demolished, they were still on the property as of tax lien date and were not demolished until later in 2017. While the demolition may be relevant to the property's value as of tax year 2018, it is not relevant to tax year 2017. See *Freshwater v. Belmont Cty. Bd. Of Revision*, 80 Ohio St.3d 26, 29-30 (1997) ("the first day of January of the tax year in question is the crucial valuation date for tax assessment purposes."). To the extent the owner argues that its purchase price reflected false assumptions about the condition of the property, this board has repeatedly held that we will not disregard a sale simply because a buyer believes it got a bad deal and potentially overpaid. See *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 14. We find no evidence in the record indicating the March 2017 sale price is not the best evidence of the property's value.

[11] Based upon the foregoing, we find appellants failed to meet their burdens on appeal and that the BOE presented evidence of recent, arm's-length sales upon which the values of the properties should be based. It is therefore the order of this board that the true and taxable values of the subject parcels as of January 1, 2017, were as follows:

PARCEL NUMBER 010-020091

TRUE VALUE: $105,400

TAXABLE VALUE: $36,890

PARCEL NUMBER 010-029252

TRUE VALUE: $51,000

TAXABLE VALUE: $17,850

PARCEL NUMBER 010-052844

TRUE VALUE: $13,600

TAXABLE VALUE: $4,760

PARCEL NUMBER 010-025606

TRUE VALUE: $150,000

TAXABLE VALUE: $52,500

OHIO BOARD OF TAX APPEALS

HOLLI FRENDEN KINGSURY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-308 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HOLLI FRENDEN KINGSURY
OWNER
384 LAKE FOREST DR.
BAY VILL, OH 44140

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, July 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered upon the county appellees' motion to dismiss, which we construe as a motion to affirm the Cuyahoga County Board of Revision's ("BOR") decision to dismiss the underlying complaint. Appellant did not respond to the motion. We proceed to decide the matter upon the motion and attachment, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

[2] The appellant property owner, Holli Frenden Kingsbury, has filed two complaints against parcel number 204-03-020. She first filed for tax year 2016, indicating the property sold on March 9, 2017 for $75,000, and that a court-approved appraisal valued the property and its contents at $90,000. The BOR denied her request for a reduction in value, stating in its oral

hearing journal summary: "sale was not considered to be arm's length because it was purchased out of the estate by an heir." Motion at Ex. A. Ms. Kingsbury filed again for tax year 2017, indicating that the property sold in an arm's-length transaction in March 2017 for $90,000. A review of the property record card included in the statutory transcript in this matter indicates that the March 2017 sale is the transaction by which Ms. Kingsbury acquired the property from the prior owner's estate. The Bay Village City School District filed countercomplaints for both tax years, but has not participated in this appeal. At the BOR hearing on the tax year 2017 complaint, i.e., the complaint at issue in this matter, counsel for the board of education noted that a very similar complaint was filed for tax year 2016. The BOR ultimately dismissed the tax year 2017 complaint for lack of jurisdiction as an improper second filing with the same interim period as the 2016 complaint. Appellant then appealed to this board.

[3] Under R.C. 5715.19(A)(2), generally, only one complaint against valuation may be filed during a three-year interim period, i.e., the period between a sexennial reappraisal of properties in the county and the triennial update of real property values (or vice versa). For Cuyahoga County, the interim period at issue in this matter is 2015 through 2017, the first of such years being one in which a triennial update was performed. On her 2017 complaint, Ms. Kingsbury noted the property had recently sold. R.C. 5715.19(A)(2)(a) provides an exception to the prohibition against multiple filings where the property was sold in an arm's-length transaction. As the Supreme Court explained in *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, there are three elements to the exception:

(1) The second-filed complaint must allege that the property value should be changed on account of the property's having been sold in an arm's length transaction;

(2) The sale must have occurred after the tax-lien date for the tax year for which

the prior complaint was filed; and

(3) The sale must not have been "taken into consideration with respect to the prior complaint."

Id. at ¶23-26.

[4] It is clear that the sale was taken into consideration with respect to the prior complaint. In an attachment to its motion, the county appellees provided the oral hearing journal summary for the BOR's proceedings on the 2016 complaint, where the BOR specifically rejected the sale. We therefore find the exception in R.C. 5715.19(A)(2)(a) does not allow for appellant's second complaint within this interim period. Appellant alleged no other exception to the multiple filing prohibition on her complaint.

[5] We note that, in response to counsel for the board of education's comment during the BOR hearing about the prior filing, counsel for appellant stated that Ms. Kingsbury had lacked standing to file the complaint as to tax year 2016 because the property had not yet transferred. There is no evidence in the record to corroborate this assertion, nor has appellant made any further argument on this point. The property record card indicates that Ms. Kingsbury acquired title to the property on March 9, 2017 and filed her 2016 complaint on March 23, 2017. It therefore appears she had standing to file the 2016 complaint. See *Public Square Tower One v. Cuyahoga Cty. Bd. of Revision*, 34 Ohio App.3d 49 (1986).

[6] Upon review of the motion and the record, the county appellees' motion is well taken. We thereby affirm the decision of the Cuyahoga County Board of Revision dismissing appellant's 2017 complaint as an improper second filing under R.C. 5715.19.

OHIO BOARD OF TAX APPEALS

ROBERT EGGERS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-281, 2019-282, 2019-283 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT EGGERS
OWNER
380 FORDHAM PKWY
BAY VILLAGE, OH 44140

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, July 2, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are now considered upon the county appellees' motions to dismiss the appeals as premature. The county appellees assert that, in each case, the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motions. These matters are now decided upon the motions and appellant's notices of appeal.

On February 21, 2019, the appellant filed applications for remission with this board. Appellant did not include copies of board of revision decisions. The record does not show that the county board of revision has issued a decision for any of the applications.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an

appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motions, we find that the appellant has not appealed from board of revision decisions and thus these matters are premature. Accordingly, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

AARON & VALERIE LOBAS, (et. al.), Appellant(s), vs. MEDINA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-505 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AARON & VALERIE LOBAS
Represented by:
VALERIE LOBAS
2336 NORTHGATE DR.
HINCKLEY, OH 44233

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
60 PUBLIC SQUARE
MEDINA, OH 44256

Entered Friday, July 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, appellants' response, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer

jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellants timely filed the appeal with this board, notice of the appeal was filed with the BOR forty-two days after the mailing of the BOR's decision. Appellants' response acknowledged that the notice of appeal was filed late with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOSEPH LITTLE - MMRC LLC, (et. al.),
Appellant(s),
vs.
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),
Appellee(s).

CASE NO(S).
2018-2190, 2018-2192

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOSEPH LITTLE - MMRC LLC
Represented by:
JOSEPH LITTLE
27881 LORAIN RD.
NORTH OLMSTED, OH 44070

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, July 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] These appeals are considered by the Board of Tax Appeals through its small claims docket and does not serve as precedent in any other case, hearing, or proceeding. R.C. 5703.021. The appellant appeals decisions of the board of revision ("BOR"), which denied applications for remission of penalties associated with delinquent payment of real property tax bills for the second half of tax year 2016 and first half of tax year 2017. We proceed to consider these matters based upon the notices of appeal, records certified pursuant to R.C. 5717.01, and

any written argument submitted by the parties.

[2] The appellant applied for remission of the late payment penalties, alleging that it did not receive the property tax bills from the first half of tax year 2015 through the first half of tax year2017 because such bills were sent to an address unaffiliated with the appellant. The appellant alleged that it immediately paid the delinquencies upon learning of them. As a result, the appellant argued that failures to timely pay the property tax bills were not based upon willful neglect but were due to reasonable cause. The appellant's request was granted as to the first half of tax year 2016; however, the requests were denied as to the second half of tax year 2016 and first half of tax year 2017. The appellant then appealed to this board. Neither the appellant nor the county appellees availed themselves of the opportunity to submit evidence at a hearing before this board. However, the county appellees filed written argument to assert that the appellant had failed to satisfy its evidentiary burden.

[3] On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the requests for remission of the real property tax late payment penalty. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

[4] Upon review, we find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late payment penalties shall be remitted. The appellant specifically requested remission of the late payment penalties under R.C. 5715.39(C), which provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA

No. 2015-1877, unreported. Here, it is undisputed that the appellant had a prior late payment of property tax bills, i.e., the property tax bill for the first half of tax year 2016. Even if the appellant did not receive a property tax bill, "[f]ailure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." R.C. 323.13. As a result, we find that the facts and circumstances described by the appellant do not satisfy R.C. 5715.39(C).

[5] Based upon the foregoing, we affirm the BOR's decisions to deny the appellant's requests for remission of the late payment penalties associated with the real property tax bills for the second half of tax year 2016 and first half of tax year 2017.

OHIO BOARD OF TAX APPEALS

JTB LA BELLA VITA LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-2059
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JTB LA BELLA VITA LLC
Represented by:
TAMMY MILLER
OWNER
JTB LABELLA VITA LLC
42 E CENTER ST
GERMANTOWN, OH 45327

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

VALLEY VIEW LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
BENJAMIN YODER
ATTORNEY AT LAW
FROST BROWN TODD LLC
9277 CENTRE POINTE DRIVE
SUITE 300
WEST CHESTER, OH 45069

Entered Friday, July 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner JTB La Bella Vita LLC ("JTB") appeals from a decision of the Montgomery County Board of Education ("BOR") valuing the subject property, a salon, at

$160,000 for tax year 2017. Both appellant and the appellee school board were represented at this board's hearing. We now decide the case on the notice of appeal, the transcript certified by the auditor, and this board's hearing record ("H.R.").

[2] The auditor valued the subject property at $62,650 for tax year 2017, and the school board filed an increase complaint requesting a value of $160,000 per a March 31, 2017 sale. In support, the school board supplied the conveyance fee statement, which confirms a sale price of $160,000 on March 31, 2017. The conveyance fee statement indicates no portion of the sale price is attributable to non-realty. JTB offered unadjusted sales data arguing the subject should be valued below the sale price. JTB is managed by Tammy Miller who testified at the BOR hearing and this board's hearing. Ms. Miller, a realtor, testified she purchased the property for her daughter to operate as a salon. The seller approached Ms. Miller to list the property on the market, and Ms. Miller instead made the seller an offer to purchase. Ms. Miller testified the parties negotiated the price, and she testified the property appraised at least for $160,000 for financing purposes. However, she testified the sale price included personal property, e.g., salon supplies, antiques, and decorations. The parties did not formally allocate the value of the personal property when the sale was negotiated. The BOR ultimately adopted the sale price finding a lack of evidence to show personal property was included in the sale and lack of evidence as to the value of that personal property, if any.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr.*

Trustee v. Cuyahoga Cty. Bd. of Revision (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v.Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7).

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶19. Here, the sale occurred three months after the tax-lien date, and there is no evidence the subject changed in character between the tax lien-date and sale date. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). Here, the parties, sophisticated businesspersons, negotiated a price without compulsion or duress. The Ohio Supreme Court has explained that a sale proponent can satisfy their initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision* , 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with a conveyance fee statement. See id. Corroborating testimony is unnecessary. Id. At ¶ 14. Once the proponent presents a facially valid sale, the burden shift to the opposing parties,who may rebut the presumption by showing that it was not an arm's-length transaction. Id. Here, the school board presented a facially valid sale with the conveyance fee statement. Accordingly, the burden shifts to JTB to rebut the presumption created by the sale.

[5] JTB offers two primary arguments in favor of its requested reduction to $140,000. See H.R., Ex. 1. First, it argues unadjusted sales data support the reduction. Raw sales data alone is generally not a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). Each of JTB's comparables varies from the respective subject; they vary from the subject in size, number of rooms, age, condition, and location. Appraisal evidence is needed to control for those variables and then apply the distilled data to the subject. See Grenny, supra,at 7-9. Moreover, the unadjusted data does not reasonably call into question the sale price.

[6] Second, JTB relies on a spreadsheet allocating non-realty values, which purports to have been created by the prior owner. See H.R. at 14. Ms. Miller testified the figures were somehow related to a prior appraisal but that appraisal was never supplied. Id. at 14-15. Ms. Miller also testified she and the prior owner assigned their own opinions of value to some items. Id. at 15. The Ohio Supreme Court has been clear that "the party advocating for a reduction below the full sale price due to an allocation to other assets bears the burden of showing the propriety of such action and must provide 'corroborating indicia' of the appropriate allocation." *Arbors E.RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property['s] value." *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶ 11. The Supreme Court has also held in some instances an appraisal can be used to show the value attributable to realty versus non-realty. Id.

[7] Here, we find JTB has not carried its burden of proving what portion of the sale price,

if any, was attributable to non-realty. Allocation must be supported by tangible, credible evidence of value. Moreover, "the mere fact that the parties to a bulk sale of assets have agreed to allocate a particular amount to real estate does not by itself establish the propriety of the allocation." *Cincinnati Sch. Dist.*, supra. Here, there is no substantive evidence of the non-realty's value, e.g., financial statements, an appraisal valuing the business. See *Arbors East*, supra. JTB neither had the real property nor the personal property appraised. In fact, Ms. Miller testified the real property appraised for at least the full purchase price during the financing process. Moving to the itemized sheet partially created by JTB for this case, we are unable to give the document much weight. First, Ms. Miller testified some of the values came from an appraisal report created by a third party for the prior owner. The appraiser did not testify in this case, and no appraisal report was offered to substantiate this claim. Because neither Ms. Miller nor JTB were personally involved with the prior appraisal, the testimony about the appraisal is unreliable hearsay. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19; see also Evid.R. 1002 (original or duplicate of writing generally to prove writing's content). Additionally, while Ms. Miller is a realtor, there is no conclusive evidence she has special knowledge, skill, training, or experience in the valuation of personal property. While an owner is an expert in their property, an owner is not necessarily an expert in valuation of real or personal property or the market. *Worthington City Schools*, supra. While an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported. In conclusion, we find JTB has not carried its burden.

[8] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER D13 00110 0158

TRUE VALUE

$160,000

TAXABLE VALUE

$56,000

OHIO BOARD OF TAX APPEALS

JEROME E. STASEK JR. AND DANA S. HARDIN, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-351 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEROME E. STASEK JR. AND DANA S. HARDIN
Represented by:
JEROME STASEK
1758 DRAYTON PARK CT
COLUMBUS, OH 43212

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

5050 SQUIRREL BEND LLC
37 W BROAD ST
STE 460
COLUMBUS, OH 43215

Entered Friday, July 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 070-011991-00 and 070-013648-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearings before this board.

The subject property consists of roughly 7.493 acres of land improved with a single-family home, pool, tennis court, bathhouse, and patio space. The auditor initially

assessed the subject's total true value at $2,152,900. Appellants filed a complaint with the BOR seeking a reduction in value to $1,587,200. Appellant Jerome E. Stasek appeared at the BOR hearing, to testify and present information about other properties that had sold near the subject property, arguing that the value of the property should be reduced. Stasek acknowledged that the subject property is unique because of the size of the house and the lot, but asserted that much of the lot is wooded and sloped. Stasek indicated that roughly 4 acres is unusable and cannot be rezoned or redeveloped. Stasek explained that the subject property had been listed for sale for several years, during which time they received only one offer of $1,550,000, which they countered at $1,800,000, but did not result in the sale of the property. Stasek testified that one of the realtors who had attempted to sell the subject property had surveyed a number of colleagues, who said that it should be listed at $1,500,000, despite it being far below appellants' 2006 purchase price of $2,202,900. Stasek provided a spreadsheet comparing the assessed values of a number of properties that had recently sold based on the value per square foot. The BOR issued a decision reducing the initially assessed valuation to $1,875,000 based on the evidence and testimony presented during the hearing. From this decision, appellants filed the present appeal. The BOR also included in the statutory transcript the listing history for the subject property and listing information for several of the properties included on Stasek's spreadsheet. Stasek appeared at a hearing convened before this board, during which he provided the auditor's assessed values for additional properties and asserted that the final offer for the subject property was $1,700,000 in June 2018, though no transfer of the property had yet occurred.

On December 31, 2018, this board issued a decision in this matter, in which we considered the evidence offered by appellants, including its current attempts to sell the property, and found value for the subject property. *Stasek v. Franklin Cty. Bd. of Revision* (Dec. 31,

2018), BTA No. 2018-351, unreported. Subsequently, appellants moved this board for reconsideration, maintaining that this board should consider information regarding the sale of the subject property that was completed after this board's merit hearing. This board granted the motion and vacated the prior decision, citing to a narrow exception to the general rule that new evidence may not be submitted after a hearing where the evidence of transfer supplements the evidence of an impending sale already in the record. *Stasek v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2018-351, unreported, citing *Emerson Network Power Energy Sys., N. Am., Inc. v. Lorain Cty. Bd. of Revision* 149 Ohio St.3d 369, 2016-Ohio-8392, ¶20. This board then convened an additional hearing for the purposes of determining the admissibility of the new transfer evidence and whether the purchase price is reliable evidence of value as of the tax lien date. Stasek again appeared at that hearing and submitted evidence of the sale and testimony regarding the circumstances of the transaction.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). The proponent of a sale must satisfy a relatively light initial burden, and "is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id.

In the present appeal, it is undisputed that the property transferred from Jerome E. Stasek Jr. and Dana S. Hardin to 5050 Squirrel Bend LLC on November 21, 2018 for

$1,730,000. Stasek testified that the property was listed by a realtor and transferred after extensive negotiation among the parties. The county appellees have provided no specific challenge to the reliability of the sale as evidence of value, and there is no suggestion that it was not recent to the tax lien date. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. Nor does any evidence in the record rebut the utility of the transaction to establish value. Accordingly, we find that the sale was a qualifying transaction for purposes of establishing the true value of the subject property.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 070-011991-00

TRUE VALUE

$1,711,600

TAXABLE VALUE

$599,060

PARCEL NUMBER 070-013648-00

TRUE VALUE

$18,400

TAXABLE VALUE
$6,440

OHIO BOARD OF TAX APPEALS

FARGO INDUSTRIAL PROPERTIES LTD., (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-126, 2018-136 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FARGO INDUSTRIAL PROPERTIES LTD.
Represented by:
KENNETH J. FISHER
KENNETH J. FISHER CO., L.P.A.
TERMINAL TOWER
50 PUBLIC SQUARE, SUITE 2100
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

ORANGE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JOHN P. DESIMONE
FRANTZ WARD LLP
200 PUBLIC SQUARE, SUITE 3000
CLEVELAND, OH 44114

Entered Friday, July 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner, Fargo Industrial Properties Ltd. ("Fargo"), and board of education ("BOE"), have both appealed a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 791-04-003, for tax year 2016. This matter is now considered upon the notices of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject property consists of approximately 7.99 acres improved with an 84,720-square-foot warehouse built in 1976, which includes 2,940 square feet of office space. A single tenant occupies the subject property, though after it vacated roughly 18,000 square feet of warehouse space, that area continued to be vacant and available to lease as of the tax lien date. The fiscal officer initially assessed the subject's total true value at $1,930,500. Fargo filed a complaint with the BOR seeking a reduction in value to $1,300,000. The BOE filed a countercomplaint in support of maintaining the fiscal officer's value. At the BOR hearing, Fargo amended its complaint to a requested value of $1,215,000 and submitted an opinion of value prepared by the property manager based on the subject property's actual income and expenses for 2016. The BOE amended its countercomplaint to $2,541,600 ($30 per square foot), relying on sale information from the transfer of a property next door, which sold for $44 per square foot, a news article regarding that transfer, and a lease offering for the 18,000-square-foot portion of the subject property that does not include an asking rent. Fargo claimed that the neighboring property was not comparable to the subject because it had been renovated and sold with two tenants in place at the time. The BOR issued a decision retaining the initially assessed valuation, which led to the present appeals.

At the hearing before this board, Fargo presented testimony and a written appraisal report from Emily L. Braman, MAI, SRA, AI-GRS. Braman performed both the sales-comparison and income approaches to value, noting that on the tax lien date, the subject property suffered from significant deferred maintenance. Braman accounted for this deferred maintenance in her sales comparison approach by utilizing buildings that sold in similar condition so that she did not need to make significant condition adjustments, concluding that the subject's value was $14 per square foot, or $1,200,000 (rounded). Braman determined that the

market rent for the subject property was $2.75 per square foot (triple net), to which she applied an 8% vacancy rate and further reduced for expenses. During the hearing Braman acknowledged an error in the report inadvertently understated expenses, which include a 3.5% management fee, reserves, and an additional reserve for extensive deferred maintenance. Braman concluded to a net operating income of $105,660, which she capitalized at 9%, concluding to an indicated value of $1,200,000 (rounded). Braman also did a land value analysis to determine that the land as unimproved would be valued at $560,000 (rounded). Braman reconciled these approaches and concluded to a total true value of $1,200,000 as of January 1, 2016.

An important part of Braman's analysis was her treatment of the subject's condition. In addition to her personal observations during two different visits to the subject property, Braman relied on a report prepared by an architect for litigation between Fargo's owner and the subject's property manager regarding deferred maintenance at the subject property. Although she did not include a copy of the full report in the addendum, Braman included relevant portions in the body of the appraisal, which reflected that the subject property was in need of $807,998.19 worth of repairs, most notable of which included $663,222.19 for roof replacement and $116,067 for concrete and asphalt paving. The BOE objected to Braman's inclusion of this report in her appraisal analysis, claiming that it is unreliable hearsay and should have been provided to the BOR if Fargo intended to rely on it on appeal. Fargo claimed that Braman's reliance on such information was proper in her role as an expert appraiser. The hearing examiner overruled the objection but allowed the parties to further address the argument

through written briefs. The BOE also submitted information to show that it had served Fargo with discovery requests, to which it received no response, though the BOE acknowledged that it did not follow up by formal or informal means.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In *Cardinal*, supra, at paragraphs two and three of the syllabus, the court held that "[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness" and that it "is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before [it]."

In the present appeal, Fargo relies on Braman's appraisal, while the BOE relies on its challenge to her analysis and cross-examination, arguing that the basis for her condition

adjustments in the sales comparison approach and deferred maintenance expense in the income approach could not be supported. Initially, we have often acknowledged that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. In this case, we find that Braman's overall methodologies were well-supported and provide a reliable evidence of the value of the subject property on the tax lien date.

More specifically, we reject the BOE's challenges to Braman's reliance on the architect's report to provide support for her conclusions. The BOE relies on *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046 ("*UTSI*"), in which the court held that "although the BTA was not required to do so, the BTA was justified in excluding [the appraiser's] statement that the sale was between related parties." Id. at ¶36. The court clarified, "[t]he scope of [the BTA's] ruling applies to the narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself, namely, whether the property's sale was between related parties. Whether the BTA would run afoul of the Rules of Evidence in excluding on hearsay grounds, say, an appraiser's reliance on market data prepared by a third party is something that can be addressed in a proper case. See *Buckeye Hospitality*, 146 Ohio St.3d 470, 2016-Ohio-757, *** at ¶ 10-11 (noting appraiser's reliance on market data prepared by third parties)." Id. at ¶38. In the present appeal, we find that Braman's utilization of the architect's report was proper, particularly where it contains the added indicia of reliability because it was

utilized by other individuals in the course of their litigation, with the owner purportedly completing many of the proposed repairs. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 (holding that even an appraisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data therein where it contained sufficient indicia of reliability.). Furthermore, Braman testified that the cost estimates were reasonable and consistent with her experience and personal observations. Finally, we find that this information is not barred by R.C. 5715.19(G) and that Braman's reliance thereon was proper within the preparation of her appraisal.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$1,200,000

TAXABLE VALUE

$420,000

OHIO BOARD OF TAX APPEALS

UNITED LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. COLUMBIANA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2016-828 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - UNITED LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s) - COLUMBIANA COUNTY BOARD OF REVISION
Represented by:
KRISTA R. PEDDICORD
ASSISTANT PROSECUTING ATTORNEY
COLUMBIANA COUNTY
105 SOUTH MARKET STREET
LISBON, OH 44432-1295

UTICA EAST OHIO MIDSTREAM, LLC
Represented by:
STEVEN L. SMISECK
VORYS, SATER, SEYMOUR AND PEASE LLP
52 EAST GAY STREET, P.O. BOX 1008
COLUMBUS, OH 43216-1008

Entered Friday, July 5, 2019

Mr. Harbarger and Mr. Caswell concur. Ms. Clements dissents.

We now consider this matter upon a motion for sanctions filed by appellee property owner Utica East Ohio Midstream, LLC ("Utica") against the appellant board of education's expert witness, George Sansoucy. Utica moves this board to censure and suspend Mr. Sansoucy from appearing and qualifying as an expert witness in matters before this board for a period five years, due to his alleged misconduct during testimony before this board. The Columbiana

County appellees have joined in the motion, and the board of education ("BOE") expressed no opposition to the motion, though the BOE subsequently clarified that it did not conclude that Mr. Sansoucy lied or intentionally misrepresented facts in his report or testimony. We consider the matter upon the written arguments provided by the parties and Mr. Sansoucy, the record of the merit hearing, and the record of the sanctions hearing, at which Mr. Sansoucy participated through counsel over the objection of Utica. We note that the parties have notified us that the BOE voluntarily dismisses its appeal on the merits with the parties' consent. See Ohio Adm. Code 5717-1-18(B).

Utica argues that Mr. Sansoucy falsely testified during this board's merit hearing about the work he did to support his opinions, the existence and function of certain piping systems at the subject property, and the products stored and produced at the subject facility. Utica argues that the repeated nature of Mr. Sansoucy's misconduct merits an unusual and extraordinary sanction – suspension from appearance before this board as an expert witness for a period of years. Mr. Sansoucy argues, in response, that any mistakes made in his report or testimony were not deliberate and that sanctions are not warranted. He further argues that this board lacks authority to grant the sanctions sought by Utica.

We begin with our authority in this matter. The Board of Tax Appeals is a creature of statute and is therefore limited to the powers conferred upon it by statute. *Steward v. Evatt*, 143 Ohio St. 547 (1944). In *Ellwood Engineering Co. v. Tracy* (Interim Order, Jan. 23, 1998), BTA No. 1996-B-1049, unreported, this board affirmed that it, like any trial court, has inherent authority to regulate the conduct before it, specifically the ethical conduct of attorneys appearing before the board. Id., citing *Royal Indem. Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 35 (1986). However, the Supreme Court, in *Snodgrass v. Testa*, 145 Ohio St.3d 418,

2015-Ohio-5364, at ¶34, cautioned that "It is one thing to postulate that an administrative tribunal has an inherent authority to control the conduct of litigation before it; it is quite another to ask this court to accord to the BTA a power that is not set forth in the enabling statutes."

Under R.C. 5703.02(A), the Board of Tax Appeals shall "exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals ***." The board shall "adopt and promulgate *** and enforce all rules relating to the procedure of the board in hearing appeals it has the authority or duty to hear," including "rules establishing procedures to control and manage appeals filed with the board ***." R.C. 5703.02(D)(3). In accordance with our authority, we have promulgated Ohio Adm. Code 5717-1-15 pertaining to sanctions. The rule provides:

> (A) Failure to comply with the rules contained in agency designation 5717 of the Ohio Administrative Code, including the deadlines set by the appeal's case management schedule pursuant to rule 5717-1-07 or rule 5717-1-08, or an order of the board may result in any of the following sanctions:
>
> (1) The dismissal of the appeal;
>
> (2) The prohibition against introducing matters into evidence in support of certain specifications of error or other parts of the notice of appeal;
>
> (3) The prohibition against introducing designated matters into evidence;
>
> (4) The prohibition against introducing expert opinion and testimony into evidence;
>
> *(5) The denial or suspension of appearing and qualifying as an expert witness in designated matters before the board*;

(6) The denial or suspension of the right of any person to appear or practice before the board;

(7) The payment of reasonable expenses caused by the failure to obey an order including attorney fees, and cost incurred by the board from the disobedient party or the attorney advising such party;

(8) The judicial relief provided in sections 5703.03 and 5703.031 of the Revised Code.

(B) The board may impose sanctions to enforce compliance with this chapter and orders as the board deems just and appropriate after the opportunity for hearing. The repetitious nature of the disobedient party or advising attorney will be considered in determining the appropriate sanctions to be imposed.

(Emphasis added.)

The situation presented here is unique, and not one that this board has been asked to consider before. It is clear from decisions of the Supreme Court that this board's authority to sanction conduct is not without limits. In *Snodgrass*, supra, at ¶35, the court indicated this board lacks authority to impose sanctions based on the nature of the decision appealed from. The *Snodgrass* court also acknowledged, however, that it *has* found the Board of Tax Appeals to have authority to make a finding of bad faith and award sanctions in the context of discovery during proceedings before the board. Id. at ¶33, citing *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998). Here, Utica asks us to sanction the conduct of an expert witness during this board's merit hearing. Such proceedings are at the core of this board's activities, just as is discovery. Under R.C. 5703.02(D), this board is given the

authority to "[a]dopt and promulgate ***, and enforce all rules relating to the procedure of the board in *hearing appeals* it has the authority or duty to hear ***." (Emphasis added.) We find the ability to regulate the conduct of an expert witness during a hearing is clearly within the board's statutory authority and is clearly addressed in the board's sanction rule.

While Mr. Sansoucy argues that the sanction sought in this matter is akin to contempt, which this board may only pursue through the attorney general or county prosecuting attorney under R.C. 5703.031, Utica has limited its request to what is specified in this board's sanction rule – suspension from appearing as an expert witness. R.C. 5703.031 indicates that it provides enforcement mechanisms "*[i]n addition* to the other remedies provided by law for effectuating compliance with ***the orders of the board ***." (Emphasis added.) R.C. 5703.02(D) already provides the board with the authority to enforce its rules. This is not a situation where the board would need additional assistance to enforce an order that is beyond our authority; rather, the sanction sought is strictly limited to proceedings before this board, over which we have control by statute. We reject Mr. Sansoucy's arguments and find we have authority to grant the sanction sought.

Having found we have the authority to grant the sanctions, we turn to whether sanctions should be imposed against Mr. Sansoucy. Utica argues that Mr. Sansoucy violated the oath given by the presiding attorney examiner prior to the start of his testimony at the multiple-days merit hearing, by falsely testifying about matters material to our consideration of this real property valuation appeal. Utica argues that such conduct is a violation of an order of the board and, as such, is appropriately subject to sanctions. In response, Mr. Sansoucy argues that there is no evidence that he knowingly made false statements. He argues that, without such knowledge or intention, his statements, to the extent they were false or misleading, do not

warrant sanction. Utica argues for a different standard; it argues that "knowingly making a false statement" includes reckless statements or "making statements where the witness is consciously ignorant of the truth of the statement." Utica Post-Hearing Sanctions Brief at 14-15.

We note with importance that, due to the BOE's voluntary dismissal of its appeal, we will not reach the merits of Mr. Sansoucy's work product and testimony and their bearing on the merits of this matter. If we had reached the merits, this board likely would have agreed with Utica that the inconsistencies and misrepresented facts in Mr. Sansoucy's report and testimony raise serious concerns about the credibility of his work product and ultimate conclusions as to real property value in this matter. And, indeed, this board likely would not have relied on Mr. Sansoucy's appraisal of the property as a result of such concerns. However, we also acknowledge that the BOE chose not to continue the hearing to allow for re-direct testimony of Mr. Sansoucy during which he could further explain the deficiencies raised during his extensive cross-examination. Being unable to reach the merits of this matter, we will not further speculate on what weight, if any, we would ultimately have given Mr. Sansoucy's opinions with the benefit of a full record.

We are limited to a consideration of whether Mr. Sansoucy's conduct during the hearing warrants sanctions. We acknowledge that similar concerns were raised about this same expert witness during this board's proceedings in a prior, unrelated case. *Newman v. Wilkins* (May 18, 2007), BTA Nos. 2002-M-170, et seq., unreported. Utica argues that the facts presented here demonstrate a "pattern of dishonesty" by Mr. Sansoucy. However, this board declined to grant *any* sanctions against Mr. Sansoucy in that matter. Mr. Sansoucy has also testified in other matters where the concerns raised here were not raised or the subject of a request for sanctions. See, e.g., *NRG Power Midwest LP v. Lorain Cty. Bd. of Revision* (Sept. 20, 2016), BTA Nos.

2015-874, 890, unreported; *Cincinnati Gas & Electric Company v. Clermont Cty. Bd. of Revision* (May 10, 2002), BTA Nos. 1998-K-707, et seq., unreported. We find the single prior motion for sanctions against Mr. Sansoucy of little importance in this matter. We must review Mr. Sansoucy's conduct in *this* case to determine whether sanctions are warranted. We reject Utica's arguments that Mr. Sansoucy's alleged conduct in that case demonstrates repeated misconduct before this board. We likewise find Utica's citations to concerns raised before other tribunals go to Mr. Sansoucy's credibility as an expert witness and have little bearing on the question of whether this board should sanction him for conduct during our own proceedings.

Upon review of the record in this matter, we conclude that sanctions are not warranted. We agree with Mr. Sansoucy that the extent of his knowledge of false or misleading statements is critical to our analysis. This board will not sanction merely negligent conduct, whether in the form of testimony or in an expert's written report, where there is no evidence that the witness intentionally attempted to mislead or deceive this board and its attorney examiners. Utica cites to the "high volume" of Mr. Sansoucy's false testimony as evidence of his intent to deceive this board; however, Mr. Sansoucy counters that his motive to so blatantly lie on the witness stand is belied by the presence of the Utica employee responsible for overseeing its entire facility during the entirety of his testimony, who could easily identify such lies. And, indeed, Mr. Sansoucy corrected testimony given in prior days when he discovered, after further review, that statements he had made were incorrect. See *State v. Johnson*, 144 Ohio St.3d 518, 2015-Ohio-4903, ¶83 ("the fact that witness changes his story is not sufficient to establish perjury.").Such behavior certainly goes to Mr. Sansoucy's credibility as an expert witness and to the reliability of his ultimate conclusions; however, we do not find they warrant sanctions by this board.

Based upon the foregoing, we hereby deny Utica's motion for sanctions. In accordance with the BOE's voluntary request, and the consent of the county appellees and Utica, see Ohio Adm. Code 5717-1-18(B), we hereby dismiss this matter.

Ms. Clements dissents.

I respectfully dissent. I find Mr. Sansoucy's conduct warrants sanctions. I agree with the majority that this board has the authority to sanction Mr. Sansoucy under Ohio Adm. Code 5717-1-15(A)(5). I find the testimony he gave to this board to have been untruthful and therefore a violation of the oath given to him by the presiding attorney examiner. Mr. Sansoucy knowingly exhibited bad faith when he testified repeatedly over five days that he had reviewed documents and personally viewed a nitrogen rejection system, a seal oil system, a pilot gas system, and a firewater system at the subject facility, despite *none* of those systems actually existing at the site. Only after extensive cross-examination and a two-day weekend break did Mr. Sansoucy recant his previous testimony and admit that these systems did not exist on the site. Further, he marked as real property three different *non-existent* piping systems. While this board granted his request to participate in the sanctions proceedings, Mr. Sansoucy failed to testify in response to the accusations lodged against him. I find his absence telling and unacceptable.

Mr. Sansoucy has held himself out to be an expert; however, I find it difficult to believe an expert would not be able to determine which systems were located on the site if he had reviewed documents and inspected the facility as he repeatedly testified to. This board's sanction rule gives us express authority to protect Ohio taxpayers and taxing authorities from known unscrupulous witnesses rather than keeping such knowledge to ourselves. We should exercise such authority here. Given the extent of Mr. Sansoucy's misconduct, I would grant the

sanctions sought by Utica and bar him from testifying as an expert before this board for a period of one year. Accordingly, I dissent from the majority's decision not to grant sanctions in this matter.

OHIO BOARD OF TAX APPEALS

TERRY HAPPENSACK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-2264
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - TERRY HAPPENSACK
P.O.BOX 340396
BEAVERCREEK, OH 45434

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, July 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This board now considers a motion to dismiss for want of jurisdiction filed by appellee Montgomery County Board of Revision ("BOR") alleging appellant Terry Happensack did not timely serve the BOR with his notice of appeal. R.C. 5717.01 requires any appellant to file their notice of appeal with the BOR and this board "within thirty days after" the BOR mails out its decision. Mr. Happensack filed a decrease complaint on three related parcels: R72152100075 ("0075"), R72152100074 ("0074"), and R72152100076 ("0076"). The BOR issued decisions for all three parcels on October 26, 2018. The BOR appears to have issued a revised decision for the 0075 parcel on November 21, 2018. See Revd Answer to Motion to Dismiss ("Response") (filed with this board on March 29, 2019). The BOR argues this board lacks

jurisdiction because 1) Mr. Happensack's appeals are untimely, and 2) because Mr. Happensack failed to timely serve the BOR with his notice of appeal.

The record is clear the appeal of parcels 0074 and 0076 were filed more than thirty days after the BOR issued its decision. The BOR decisions on those parcels were mailed October 26, 2018. The appeal to this board was docketed on December 21, 2018. Accordingly, the appeal was not taken within thirty days as required by R.C. 5717.01.While parcel 0075 may have been timely appealed because of the revised BOR decision issued November 21, 2018, the record is clear the BOR was not timely served. In his filings, Mr. Happensack does not claim he served the BOR within thirty days. Instead, he argues R.C. 5717.01 does not impose a timeline in which a notice of appeal must be served on the BOR. See Response at 4. He argues the relevant sentence applies to "the form by which such an appeal is to be taken thus in the form of a notice of appeal, and by what means the notice may be delivered or transmitted." Id. He argues "there is no time limit specified for filing or forwarding such notice of appeal to both parties therein mentioned." Mr. Happensack also notes the BOR was informed electronically through this board's e-filing system. Id. at 5-6. However, Mr. Happensack cites no case to support his interpretation.

We respectfully find Mr. Happensack misinterprets R.C. 5717.01. The language in that statute clarifies how an appeal must be taken, and it states "such appeal **shall** be taken by filing of a notice of appeal***with the board of tax appeals **and** with the county board of revision. (Emphasis added.) Our cases have been clear the notice of appeal must be filed with the BOR within thirty days. See *Collins v. Wood Cty. Bd. of Revision* (Apr. 30, 1993), BTA No. 1992-K-921, unreported; *Sam & Jay Company v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2018), BTA No. 2017-2284, unreported. Moreover, the Ohio Supreme Court has expressly

rejected the argument that a notification from this board satisfies an appellant's statutory duty to file notice of hte appeal with the BOR wtihin thirty days of the BOR's decision. See *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989). Accordingly, we find the appeal of parcels of 0074 and 0076 is untimely. We also find we are without jurisdiction to consider any of the parcels because the BOR was not timely served as required by R.C. 5717.01

We note that even if this board had jurisdiction of this case, we would not find an adjustment is warranted based on Mr. Happensack's appraisal or evidence of negative defects. We generally reject an appraisal when the appraiser fails to appear before this board or the BOR. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials or authenticate the report (including addenda). Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. The Supreme Court has been clear that, while negative conditions can impact value, the party must present adequate evidence of the specific impact those negative conditions have on the properties; dollar-for-dollar costs do not necessarily correlate to value. See *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported.

Regardless, because the notice of appeal was not filed with the BOR within thirty days, this case must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SCOTT HOLTHAUS, (et. al.),)
)
Appellant(s),)
)
vs.)
)
FRANKLIN COUNTY BOARD OF) REVISION, (et. al.),)
)
Appellee(s).)

CASE NO(S). 2018-2160

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - SCOTT HOLTHAUS
3130 WAREHAM ROAD
COLUMBUS, OH 43221

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Tuesday, July 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The above-named appellant appeals decisions of the board of revision ("BOR"), which denied applications for remission of late payment penalties assessed on the real property tax bill for parcels 010-026213-00 and 010-030398-00 for the second half of tax year 2017. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

[2] The appellant filed applications for remission of the late payment penalties, which asserted that he failed to pay the property tax bills for the second half of tax year 2017, which were due on or before June 20, 2018, because he did not receive them and because they were sent

to the former and/or current holder of the mortgages encumbering the parcels. He asserted that he paid the delinquencies on August 29, 2018. The BOR determined that the applications should be denied because the appellant had a prior history of late payment of property tax bills, i.e., the first half of tax year 2017, for both parcels. This appeal ensued. Neither the appellant nor the county appellees availed themselves of the opportunity to submit evidence at a hearing before this board.

[3] On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the requests for remission of the real property tax late payment penalties. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Based upon our review of the record before us, for a number of reasons, we find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalties. R.C. 5715.39 provides the guidelines to determine when real property tax, late payment penalties shall be remitted. We begin our consideration by determining whether the appellant qualifies for remission of the late payment penalties under R.C. 5715.39(B)(2), which provides, in relevant part, that the late payment penalty shall be remitted if a property tax bill was not received and the taxpayer "made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax." First, there is no evidence that the appellant did not receive the property tax bills for the second half of tax year 2017. Second, there is no evidence that the appellant attempted to obtain a copy of the property tax bills within thirty days of their due date of June 20, 2018, i.e., on or before July 20, 2018. Third, even if the appellant did not receive the property tax bills, "[a] change in the mailing address of any tax bill shall be made in writing to the county treasurer. *** Failure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." R.C. 323.13. As such, we find that the appellant does not qualify for remission of the late payment penalties under R.C.

5715.39(B)(2).

[4] We continue our consideration by determining whether the remission of the late payment penalties would be appropriate under R.C. 5715.39(B)(5), which specifically provides that the late payment penalty shall be remitted if, "[w]ith respect to the *first payment* due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer." (Emphasis added.) There is no evidence to demonstrate whether any mortgage had been satisfied and there is no evidence to demonstrate whether the property tax bills for the second half of tax 2017 were the "first payment[s] due" after satisfaction of any mortgage. As such, we find that the appellant does not qualify for remission of the late payment penalties under R.C. 5715.39(B)(5).

[5] We conclude our consideration by determining whether remission of the late payment penalties would be appropriate under R.C. 5715.39(C), which provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that the appellant had at least one prior late payment of property tax bills, i.e., the payment for the first half of tax year 2017, for both parcels. As such, we find that the appellant does not qualify for remission of the late payment penalties under R.C. 5715.39(C).

[6] Based upon the foregoing, we deny the appellant's requests for remission of the late payment penalties for the property tax bills for parcels 010-0262130-00 and 010-030398-00 for the second half of tax year 2017.

OHIO BOARD OF TAX APPEALS

LAKOTA LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-1121 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LAKOTA LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

BETHESDA HOSPITAL, INC.
619 OAK STREET
CINCINNATI, OH 45206

Entered Tuesday, July 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel M5610004000076, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the BOE's written argument.

The subject property was initially assessed at $8,832,710. The BOE filed a complaint with the BOR, which requested that the subject property's value be increased to reflect the price

at which it transferred in April 2017. The BOE attached a conveyance fee statement, which memorialized the $20,330,000 transfer of the subject property from Duke Realty Partnership to Bethesda Hospital, Inc. ("Bethesda") in April 2017. Bethesda did not file a countercomplaint. At the BOR hearing on the matter, only the BOE appeared to submit argument and/or evidence into the record. Counsel for the BOE relied upon the previously submitted conveyance fee statement to argue that the subject property's value should be increased to $20,330,000. The auditor's representative discussed his alleged knowledge of the facts and circumstances of the subject sale based upon an Internet article purportedly from the Cincinnati Business Journal. The BOR proceeded to vote to retain the subject property's initially assessed value and subsequently issued a written decision to that effect. This appeal ensued. None of the parties availed themselves of the opportunity to supplement the record with additional evidence at a hearing before this board. Only the BOE submitted written argument to fully assert its position, i.e., that the record is devoid of any evidence to rebut the presumptions accorded to the subject sale and that the BOR's evidence fell woefully short of the evidentiary standard.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

We begin our analysis with the subject sale. The presentation of the conveyance fee

statement created a rebuttable presumption that the subject sale was a recent, arm's-length transfer indicative of the subject property's value. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The burden then shifted to the opponent(s) of the subject sale to provide evidence to rebut such sale. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶¶32, 34 ("BOE provided basic documentation of the sale, Terraza had the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value. *** The February 2013 sale price, which Terraza does not dispute, is the best evidence of the property's true value, subject to rebuttal." (Citation omitted.)). As the opponent of the subject sale, the BOR was obligated to provide sufficient evidence to support its rejection of such sale. It failed to do so.

Though the auditor's representative discussed what he believed to be the facts and circumstances of the subject sale, there is no indication that he actually had firsthand knowledge of the topics of which he spoke. For example, the auditor's representative stated that Bethesda purchased the subject property in order to buyout the remaining lease term between it and Duke Realty. However, the record is devoid of any evidence of such assertion. Because the factual assertions made in his monologue were clearly offered for the truth of the matter asserted, we must conclude the statements of the auditor's representative to be unreliable hearsay as the statements were not competent, credible, or probative. See, e.g., *Dellick v. Eaton Corp.*, 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). See, also *Lakota Local School Dist. Bd. of Edn. v. Butler Cty.*

Bd. of Revision (Dec. 18, 2017), BTA No. 2017-1400, unreported at 2 ("To the extent that the BOR based its decision on an alleged conversation between a county employee and someone affiliated with the property owner, evidenced through a handwritten note on the property record card, we consider such notation to be unreliable hearsay especially in this instance because no one with firsthand knowledge of the subject sale testified at the BOR hearing."). See, generally *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2016-Ohio-1059, ¶15 ("Mere speculation is not evidence."). For the same reasons, we do not find the article from the Cincinnati Business Journal to be competent, credible, or probative.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the BOE presented evidence that the subject property was the subject of a recent, arm's-length sale. Neither the property owner nor the county appellees submitted competent, credible, and probative evidence to rebut the subject sale. Absent an affirmative demonstration that the $20,330,000 sale in April 2017 was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject property's value as of tax lien date and that the BOR's decision was in error. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7 ("[O]ur case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

TRUE VALUE: $20,330,000
TAXABLE VALUE: $7,115,500

OHIO BOARD OF TAX APPEALS

JODIE RICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-326
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JODIE RICH
OWNER
2613 ROCKEFELLER LANE #C
REDONDO, CA 90278

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, July 10, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board and the BOR *within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer

jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant filed notice of this appeal with this board and with the BOR more than two months after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JUDITH C MCGINLEY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-561, 2019-562
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - JUDITH C MCGINLEY
Represented by:
JUDITH MCGINLEY
21982 SEABURY AVENUE
FAIRVIEW PARK, OH 44126

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, July 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss theses matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is

essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notices with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

DORIS ROBINSON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1616
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DORIS ROBINSON
9316 BRIDGECREEK DRIVE
CINCINNATI, OH 45231

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Thursday, July 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals two decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcel numbers 207-0054-0003-00 and 590-0230-0725-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments.

Parcel number 207-0054-0003-00 is improved with a single-family home, which was appellant's former residence and is located on McHenry Avenue. On the tax lien date, the property was vacant and uninhabitable because the plumbing had been stolen. The auditor initially assessed its value at $38,130, and appellant filed a complaint seeking a reduction to $8,000. At the BOR hearing, appellant relied on an appraisal performed for a prior tax year and

that opined the subject's value was $8,000 as of January 1, 2014. Appellant indicated that she relied on the appraisal to demonstrate the condition of the property as it had not improved since the appraisal was completed. Appellant also provided information regarding four properties that had sold and, she maintained, were similar to the subject property. A staff appraiser from the auditor's office relied on a report he completed and asserted that the comparable properties that he reviewed indicated that the value of the subject was no more than $16,500, as the land was worth roughly $12,000 and the home contributed only a few thousand dollars in its condition. The BOR reduced the subject's value to $16,500 based on the appraiser's testimony, and appellant appealed to this board. At the hearing before this board, appellant again testified that the property's value should be further reduced based on its poor condition and the appraiser's acknowledgement that the house contributed little to no value.

Parcel number 590-0230-0725-00, located on Bridgecreek Drive, is a condominium unit purchased by appellant in 2011 and continues to be her primary residence. The auditor initially assessed the subject's total true value at $156,410, and appellant filed a complaint with the BOR requesting an adjusted value of $89,000. At the BOR hearing, appellant challenged the auditor's value of the property, maintaining that it was based on a neighboring property and not the subject, noting that the photograph did not depict the subject unit. The BOR reviewed details on the property record card to confirm whether they matched the correct property and were satisfied that the photograph was wrong but the other data that formed the basis for the auditor's value was correct. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. At this board's merit hearing, appellant again claimed that the auditor did not value the subject property, though she confirmed that the room and condition descriptions on the property record card appeared to be correct.

The burden in the present appeal is on appellant to prove her right to a reduction from the BOR's value. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Appellant seeks to meet this burden through evidence of the McHenry property's condition and a challenge to whether the auditor completed an appraisal of the Bridgecreek property. As the owner of the subject property, appellant is competent to testify about the subject's value, but this board must determine the appropriate weight to accord her testimony. *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733. Because we find that the evidence upon which appellant bases her opinions of value is not probative, we further find appellant failed to satisfy her burden on appeal.

We first consider the evidence offered by appellant regarding the value of the McHenry property, which included the 2014 appraisal report and updated list of sales. We acknowledge that appellant provided the appraisal not for its independent valuation but rather to demonstrate the condition of the property. Nevertheless, we consider whether its conclusions can be given weight in our determination and find that they do not. Initially, we observe that this appraisal report constitutes unreliable hearsay because it was presented without testimony from the appraiser, and the value conclusions should not be given any credence in our analysis. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21. We find that the appraisal contains insufficient indicia of reliability and the information contained therein does not furnish an independent basis for valuing the property. Id. at ¶27. Furthermore, we find that the evidence of negative conditions alone does not establish that the value of the property should be further reduced, as appellant has failed to

establish the specific extent to which these issues affect the subject's value, if at all. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶17. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). The appraisal report provides little insight into how the subject's condition affects its value on January 1, 2017. Notably, it compares the subject property (colonial) to properties of different styles (cape and ranch) that sold three and four years prior to tax lien date.

Additionally, we find that the comparable sales information submitted by appellant does not establish the further reduced value that she seeks. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the list of sales appellant provided to the BOR is not probative evidence of value because appellant has not shown any knowledge about the circumstances of those sales or adjusted them for differences among the properties. See *Moskowitz*, supra.

Furthermore, while we find that the evidence does not allow this board to independently establish a value, we find that the BOR's value is supported by the record, and more specifically the testimony offered by the auditor's staff appraiser. Though we recognize that the staff appraiser relied on sales from a different neighborhood, the appraiser also reviewed the sales provided by appellant to reach his conclusions. It appears that by adopting the adjusted value, the BOR addressed several of appellant's concerns and she benefitted from the corresponding reduction in value, the propriety of which has not been challenged on appeal. As such, we find it appropriate in this case to retain the BOR's value. *Moskowitz*, supra, at ¶10.

The BOR retained the auditor's value for the Bridgecreek property, and appellant

challenges the auditor's underlying methodology by arguing that his office did not view the subject property and, therefore, he did not fully comply with his duties to value the subject property. We recognize that the photograph attributed to the subject property on the auditor's records may depict a different unit, but both the BOR and this board's attorney examiner confirmed that the relevant details included on the subject's property record card that are used by the auditor to value the property were correct. Because an auditor is presumed to have acted consistent with Ohio law when he or she certifies a value on the tax list and duplicate, it is not a high bar to show that he or she properly exercised this authority. For that reason, as previously noted, it was incumbent upon the property owner in the present appeal not to merely challenge the valuations of the auditor and BOR, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. *Jakobovitch v. Cuyahoga Cty. Bd. of Revision,* 152 Ohio St.3d 187, 2017-Ohio-8818. Compare *Johnson v. Clark Cty. Bd. of Revision,* 2nd Dist. Clark No. 2013 CA 32, 2014-Ohio-329 (remanding a matter to the BOR where the record did not include any reliable and probative support that the auditor's initial calculation of the current agricultural use value of a property correctly applied relevant statutory authority); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, (holding that this board could not reinstate the auditor's value where it was clearly negated because the record showed it based on an incorrect completion percentage). In this case, despite a potential mistake with the photographs, we find that appellant has failed to negate the auditor's value for the Bridgecreek property and has not offered any evidence to establish an alternative value. Accordingly, we find that appellant has failed to meet her burden on appeal.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 207-0054-0003-00

TRUE VALUE

$16,500

TAXABLE VALUE

$5,780

PARCEL NUMBER 590-0230-0725-00

TRUE VALUE

$156,410

TAXABLE VALUE

$54,740

OHIO BOARD OF TAX APPEALS

JANET DAVIS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-957
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - JANET DAVIS
6131 SOMERSET DR
NORTH OLMSTED, OH 44070

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, July 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considering following this board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. As indicated in our earlier order, it appears from the statutory transcript certified by the fiscal officer that appellant has not appealed from a decision of the Cuyahoga County Board of Revision. Indeed, it appears appellant did not file a complaint against valuation upon which such a decision could be issued. See R.C. 5715.19.

R.C. 5703.02 grants this board the authority to hear and determine appeals from decisions of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the board of tax appeals within thirty days after *notice of the decision of the county board of revision* is mailed as provided in division (A) of section 5715.20 of the Revised Code."

(Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

Appellant has presented no indication that a decision was issued by the Cuyahoga County Board of Revision from which this appeal could be taken. Accordingly, appellant has failed to invoke this board's jurisdiction and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
	)	CASE NO(S). 2018-184
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

GARDEN HEALTHCARE OF ROCKY RIVER PROPERTY LLC

Represented by:
JOHN STOCK
BENESCH, FRIEDLANDER, COPLAN & ARONOFF, LLP
41 SOUTH HIGH STREET
SUITE 2600
COLUMBUS, OH 43215

Entered Thursday, July 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal filed by the Cleveland Municipal School District Board of Education ("BOE") from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 026-08-091 for tax

year 2016. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, the record of the hearing ("H.R.") before this board, and the parties' briefs.

The subject property is a skilled nursing home known as Rocky River Gardens. For tax year 2016, the county fiscal officer valued the real property at $4,200,000. The BOE filed an increase complaint requesting a value of $8,937,630 in accordance with a conveyance fee statement filed on December 29, 2016. The property owner, Garden Healthcare of Rocky River Property LLC ("Garden Healthcare") filed a countercomplaint seeking a value of $4,468,816, indicating such amount was the allocation of an overall purchase price to real property. After a hearing, the BOR ultimately increased the value to only $4,468,816 based on the owner's evidence of the allocation of the sale. On appeal to this board, the BOE argues such allocation does not reflect the fair market value of the real property. Instead, the BOE advocates for the full purchase price ($8,937,630), or, in the alternative, for one of two allocations: a value of $6,487,630 (using an allocation to non-realty developed by Garden Healthcare's witness at the BOR, appraiser Richard G. Racek, MAI), or a value of $7,637,630 (using an allocation to non-realty developed in a financing appraisal prepared by HealthTrust, H.R., Ex. 9). The owner continues to advocate for its allocation of $4,468,816 and objects to any reliance on the HealthTrust financing appraisal, arguing it constitutes unreliable hearsay.

As we consider this matter, we begin with the principle that the best evidence of the fair market value of real property is a recent, arm's-length sale of the property. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415; *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977). The parties do not dispute that the subject real property sold in an arm's-length transaction recent to tax lien date. See *Lone Star Steakhouse &*

Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision, 153 Ohio St.3d 34, 2018-Ohio-1612. The parties likewise do not dispute that the transaction by which the real property transferred to Garden Healthcare was part of a larger transaction involving thirteen nursing home properties and involving the sale of both the real property and ongoing business at those facilities, and do not dispute the allocation of $8,937,630 of the bulk sale price to this facility.

The sale to Garden Healthcare of the entire ongoing business of the Rocky River Gardens facility was accomplished through two transfers. First the seller in the transaction, Manor Care-Rocky River of Cleveland OH, LLC ("Manor Care"), was required to obtain title to the real property, which was held by a REIT, HCP Properties LP. Once the real property was obtained by Manor Care, it then transferred all the assets, including the real property, certificates of need, and other personal and intangible property, to Garden Healthcare. These two steps resulted in the filing of two conveyance fee statements, two minutes apart from each other on December 30, 2016. First, a conveyance fee statement showing a transfer from HCP Properties LP to Manor Care was recorded at 3:07 p.m., stating that $8,937,630 was the total consideration for real property only. H.R., Ex. 1. Second, a conveyance fee statement showing a transfer from Manor Care to Garden Healthcare was recorded at 3:09 p.m., stating that of the $8,937,630 total consideration, $4,468,816 was consideration for real property. H.R., Ex. 3.

As the sale closest in time to tax lien date, see *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, paragraph one of the syllabus, the BOE asks us to adopt the $8,937,630 price from the sale to Manor Care as the value of the subject real property. However, given that the second transaction allocated 50% of that value to non-realty, we do not find the full price of $8,937,630 to be reflective of the real property value. There is no evidence in the record indicating why such amount was listed as the consideration for real

property in the sale to Manor Care; however, it seems likely such amount was simply taken from the allocation of the bulk transaction and reflected the overall business value of the Rocky River Gardens facility in the overall $60,000,000 transaction.

We therefore turn to the question of the proper allocation of the $8,937,630 overall purchase price to the subject real property. As the Supreme Court explained in *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision,* 153 Ohio St.3d 41, 2018-Ohio-1611:

> "When applied to such 'bulk sales,' the familiar precept that '[t]he best evidence of "true value in money" of real property is an actual, recent sale of the property in an arm's-length transaction' has a corollary: the principle that the law favors a 'proper allocation of [a] lump sum purchase price' over 'an appraisal ignoring the contemporaneous sale.' *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, *** (1977), paragraphs one and two of the syllabus." (Parallel citation omitted.) Id. at ¶16.

Where the owner asks that the parties' allocated sale price be used, the burden is on the owner to provide corroborating indicia to support the allocation. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 115 Ohio St.3d 109, 2017-Ohio-7650, ¶9-10. Further, "[t]he case law clearly establishes that a sale of a congregate-care facility is a sale of the facility's real-estate and business activities. *Dublin Senior Community Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 460, *** (1997). *** 'In a valuation of only the real estate, the two activities must be kept separate.' *Id.*" (Parallel citation omitted.) *Arbors E.*, supra, at ¶19.

The record before us contains evidence of three different allocations. At the outset, we address the BOE's proposal to allocate the sale price in accordance with an appraisal performed

by HealthTrust at the request of The Private Bank, the entity that granted the mortgage to finance the sale transaction. H.R., Ex. 9. See H.R., Ex. 7. Garden Healthcare objects to this board's consideration of the appraisal, as it was not authenticated by its author and therefore constitutes unreliable hearsay. The Supreme Court has permitted the use of financing appraisals, without the testimony of their authors, in two situations. First, the court in *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865, held that an appraisal relied upon by the parties in negotiating a sale price was reliable evidence that the sale reflected fair market value, even in the absence of testimony from its author. Here, it is unclear what role the HealthTrust appraisal played in the negotiation of the sale of the subject property. The cover letter to the report, addressed to an appraiser apparently affiliated with The Private Bank, indicates the "report will be used to assist with internal decision-making involving the subject" property. H.R., Ex. 9 at i. At the BOR hearing, Eli Leshkowitz, senior vice president of Garden Healthcare, testified he had not seen the appraisal. It is therefore not clear whether any of the parties to the transaction relied upon the appraisal in negotiating the sale of the subject property, or as part of the larger bulk transaction.

Even where the opinion of value itself is not competent evidence of value, the Supreme Court has held that, in some circumstances, the data within the report can be relied upon in determining value. However, the court predicated its holding, in *Copley-Fairlawn City School Dist. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, on there being testimony about the origin and use of the appraisal report. In that case, the owner's representative indicated the appraisal was commissioned by his financial institution in connection with refinancing and ultimately constricted the amount of equity against which the owner could borrow. Id. at ¶24. See also *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of*

Revision, 130 Ohio St.3d 230, 2011-Ohio-3362, ¶21 (finding "indicia of reliability" for the content of the appraisal report in evidence that the report was prepared *and used* for a specific business purpose). Once again, here, the record does not establish what, if any, reliance was placed on the HealthTrust appraisal, or how it was used, if at all. Under these circumstances, we find the appraisal report is not competent evidence of the value of the subject property. Garden Healthcare's objection to the admission of the HealthTrust appraisal report is sustained.

Garden Healthcare has presented two other allocations of the overall $8,937,630 sale price. First, as reported on its conveyance fee statement, it argues the parties negotiated a 50% allocation of the overall sale price to realty and 50% to non-realty, including the certificates of need. See H.R., Ex. 8. Second, to support the parties' negotiated allocation, Garden Healthcare presented Mr. Racek's appraisal, which included a value for the ongoing business concern, and allocations between real estate and non-realty assets. Using the sales comparison approach to value, Mr. Racek looked to seven sales of the ongoing businesses other nursing homes. For each sale, he indicated the overall purchase price and the allocations made by the parties to the sale. Garden Healthcare notes that the range of allocations of the overall sale prices to real estate ranged from 32% to 63%, H.R. at 17, indicating that the parties' allocation of 50% of the overall purchase price to the subject real property is supported by the market. Under his sales comparison approach, Mr. Racek opined a value of $6,300,000 for the going concern of Rocky River Gardens, with $17,500 per bed (or $2,450,000) allocated to non-realty assets, leaving $3,850,000 (or approximately 61% of the total) allocated to real property. Mr. Racek also used an income capitalization approach, by which he applied a gross income multiple derived from the operating history of his sale comparables (1.05) to the subject property's 2016 gross potential income, to arrive at a value of the going concern of $5,600,000. He again deducted

$17,500 per bed (or $2,450,000) for the value of non-realty assets, to arrive at a value of $3,150,000 for the real estate. Giving substantial weight to the sales comparison approach, Mr. Racek reconciled his values at $3,850,000 for the subject real property as of January 1, 2016.

Garden Healthcare makes clear that it is not requesting a reduction in value to Mr. Racek's appraisal value. Instead, it presents Mr. Racek's report to support the allocation to real estate negotiated by the parties in the December 2016 sale transaction. At the BOR hearing, counsel for the BOE noted that Mr. Racek's report is based on the subject's actual financials for calendar year 2016, while Mr. Leshkowitz testified that Garden Healthcare looked at the 2015 financials in its decision making about the sale. However, the BOE still argues that Mr. Racek's allocation to non-realty ($2,450,000) is a better allocation that the parties' "arbitrary allocation" of 50% (or $4,468,816).

Upon review of the evidence before us, we find the parties' negotiated allocation of $4,468,816 to the subject real property, as supported by Mr. Racek's appraisal report, is the best evidence of the subject property's value. There is no dispute that *some* allocation of the $8,937,630 sale price is appropriate. See *Arbors E.*, supra. We find it inappropriate to completely disregard the parties' allocation of the sale price. While the BOE argues that allocation was arbitrary, the data within Mr. Racek's report supports the allocation based on allocations to real estate made by other parties in other arm's-length nursing home sales. We find the data in Mr. Racek's report constitutes corroborating indicia of the reliability of the parties' allocation of the sale price to the subject real property.

Based upon the foregoing, we find the December 2016 sale of the subject real property, as reported on the conveyance fee statement recorded at 3:09 p.m. on December 30, 2016, is the best evidence of the subject property's value on tax lien date. It is therefore the order of this

board that the true and taxable values of the property as of January 1, 2016, were as follows:

TRUE VALUE

$4,468,820

TAXABLE VALUE

$1,564,090

OHIO BOARD OF TAX APPEALS

JEFFCO RESOURCES, INC., (et. al.), Appellant(s), vs. BELMONT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1528, 2017-1529 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEFFCO RESOURCES, INC.
Represented by:
JESSICA L. DAVIS
BRENNAN MANNA & DIAMOND
250 CIVIC CENTER DRIVE
SUITE 300
COLUMBUS, OH 43215

For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

BARNESVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
CHRISTIAN M. WILLIAMS
ATTORNEY AT LAW
PEPPLE & WAGGONER, LTD.
CROWN CENTRE BUILDING
5005 ROCKSIDE ROAD, SUITE 260
CLEVELAND, OH 44131-6808

Entered Thursday, July 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Jeffco Resources, Inc. ("Jeffco"), appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real property, fifteen parcels of mineral rights located in Belmont County, for tax year 2016. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to

R.C. 5717.01, the record of the hearing before this board, and any written argument submitted by the parties.

The subject parcels were created in 2016 to separate the mineral interest that was reserved by Jeffco when it transferred the surface rights of the property to a new owner. At that time, the auditor established a value of the mineral rights at $1,500 per acre. Jeffco filed complaints with the BOR seeking reductions in value to $0, asserting that all of the coal had been depleted and it does not own any oil and gas rights. The appellee board of education ("BOE") filed countercomplaints in support of maintaining the auditor's values. The BOR convened a hearing, at which Jeffco relied on testimony from Paul Carapolletti, Jeffco's Secretary and Treasurer; Thomas Lyons, a mining engineer with knowledge of the coal mining that took place at the subject property before title to the mineral rights was severed from title to the surface rights; and Charles G. Snyder, RM, MAI, who performed an appraisal of the subject parcels. During the hearing, Jeffco attempted to demonstrate that it had retained title to the mineral rights after the coal was depleted and all that remained was "mine spoil," or the waste product that is left over after the surface mining is complete. Jeffco also complained that the auditor's value for the severed mineral rights exceeded the value of the same property when Jeffco held title to both the mineral and surface rights under a single parcel number. Snyder explained that he was unable to find any sales of similar mineral rights and that with the current technology, removal of any remaining minerals is cost prohibitive. Because he concluded that the property must have some value, he attributed a nominal value of $1 per parcel to the property. The BOE cross-examined the witnesses and argued that Jeffco failed to meet its burden but did not present any independent evidence of value. Following the hearing, the BOR issued decisions reducing the value of the property to $675 per acre, which Jeffco appealed to

this board. Jeffco again relied on the testimony of Carapolletti, Lyons, and Snyder, also presenting testimony from a professional surveyor, Frank Bair, and various documents to corroborate testimony. The BOE relied on cross-examination and legal argument, claiming that none of Jeffco's evidence was competent and probative or would support a further reduction in the value of the subject property.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. When title to mineral rights is held in the name of a person or persons different from the owner of the surface rights, the mineral rights are listed and taxed separate from the surface parcel and should be valued and assessed in the same manner as other real property. R.C. 5713.04; R.C. 5713.03; Ohio Adm. Code 5703-25-11(I). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In *Cardinal*, supra, at paragraphs two and three of the syllabus, the court held

that "[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness" and that it "is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before [it]."

In the present appeals, Jeffco relies on the testimony from Carapolletti, Lyons, and Bair to verify which minerals are (and are not) present in the subject parcels, and Snyder's analysis to establish the value of those minerals. Snyder testified that he attempted to rely on accepted appraisal techniques in order to estimate the value of the property but was unable to find any sales data for similar mineral rights and, therefore, concluded that no such market exists. Yet, Snyder acknowledged that the parcels must have a value more than zero, thereby assigning the nominal value of $1 per parcel. We reject the BOE's challenge to Snyder's qualifications regarding the appraisal of mineral parcels and note that the preferred appraisal techniques for valuing land apply to the valuation of subsurface rights and that Snyder has complied with those techniques. Ohio Adm. Code 5703-25-11(I) ("Coal and minerals shall be valued in the same manner and on the same price level as other real property. Some of the factors that shall be considered in valuing coal and mineral deposits are the quality and extent of the deposit, the active working area which at current production will be mined within five years, active reserves that will not be worked for five to ten years, inactive reserves that will not be worked until after ten years, and mined out or depleted areas."). Furthermore, we disagree with the BOE's contention that Jeffco did not demonstrate that the minerals remaining on the property constituted mine spoil, as Jeffco provided testimony from multiple individuals who witnessed the mining that took place and testified regarding the process for removing the coal, the depletion of coal from the soil, and the mine spoil that remained at the end of the process. Specifically, Lyons testified that during the surface mining process, all materials above the coal

seam were blasted, moved, comingled and destroyed in order to get to the coal seam. Accordingly,

we find that the BOE's challenges to Snyder's appraisal are unpersuasive and agree with Snyder that the property should be assessed at a nominal value.

Finally, we acknowledge that this board has historically rejected the argument that a property is worthless or has zero value. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 5, 2015), BTA No. 2014-1227, unreported; *Loritz v. Butler Cty. Bd. of Revision* (May 6, 2008), BTA No. 2006-K-1503, unreported. In the unique circumstances of this case, however, we find that Jeffco has established that the mineral rights of the mine spoil remaining on the subject property had only a nominal value on January 1, 2016 after being severed from the surface rights. Accordingly, we find that each subject parcel should be assessed at a total true value of $10 as of January 1, 2016, with a taxable value of 35%. R.C. 5715.26; Ohio Adm. Code 5703-25-06.

OHIO BOARD OF TAX APPEALS

SUE ELLEN TIMMONS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-2121
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HARRISON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - SUE ELLEN TIMMONS
Represented by:
SUE TIMMONS
1013 CHESTNUT ST.
ASHLAND, OH 44805

For the Appellee(s) - HARRISON COUNTY BOARD OF REVISION
Represented by:
T. OWEN BEETHAM
PROSECUTING ATTORNEY
HARRISON COUNTY
111 W. WARREN STREET
P.O. BOX 248
CADIZ, OH 43907

BOARD OF EDUCATION OF THE HARRISON HILLS CITY SCHOOL DISTRICT
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, July 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Sue Ellen Timmons, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 26-0000269.200 and 26-0000270.200, for tax year 2013. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the record of this board's prior proceedings for this matter,

BTA No. 2014-3575. We note that despite this board's attempts to obtain a complete and accurate record of the proceedings below, the BOR has failed to transmit the countercomplaint filed by the board of education ("BOE"), a record of the hearing convened on the matter in 2018, or property record cards. As such, we are unable to consider such evidence in our determination.

The subject property consists of two parcels assigned to subsurface mineral rights that were severed from the surface rights in 1980. Timmons explained that these mineral rights were first assigned a parcel number in 2011 and were first assigned a taxable value for tax year 2013 (payable in 2014). The auditor initially assessed the subjects' total true value at $56,600. Timmons filed a complaint with the BOR seeking a reduction in value to $0. It appears that the BOE filed a countercomplaint, though none has been certified to this board. The BOR first scheduled a hearing for June 16, 2014 and rejected Timmons' request to reschedule the hearing because she was unable to attend. The BOR issued a decision dismissing Timmons' complaint, which was reversed by this board and remanded for further proceedings after Timmons and the BOE appeared at a hearing before this board on the matter. *Timmons v. Harrison Cty. Bd. of Revision* (Oct. 15, 2015), BTA No. 2014-3575, unreported. The BOR then convened a hearing on February 16, 2018, though the record does not include any recording or minutes of those proceedings because, according to the statutory transcript, no court reporter was available to type the transcript. The record is not clear as to whether the BOE was notified of or present at the 2018 hearing. Thereafter, the BOR issued a decision maintaining the auditor's values, which Timmons appealed to this board.

This board convened a merit hearing, at which Timmons presented her argument that the parcels consist of solely mineral rights, which she argued should not be assessed at any value

until the minerals are severed from the ground, citing to R.C. 5713.05 and R.C. 5713.051. Timmons argued that valuing a parcel before such time as the minerals are removed is assigning a speculative number to that parcel where there is nothing on which to base that value. Timmons further asserted that the practice of taxing mineral rights based on a speculative future value represents unequal taxation when the mineral rights that have not been split from the surface rights are not assessed a different value. Timmons also noted her frustration with the Harrison County complaint process, asserting that it has taken more than five years because the county has stalled and obfuscated. The county appellees did not appear or present legal argument, and the BOE did not participate in the present appeal.

At the outset, we remind the BOR as to the importance of properly maintaining and submitting an accurate record of its proceedings. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The BOR should take care to ensure its evidentiary record is accurate and provide all evidence considered during its proceedings in the transcript provided to this board because it defaults on its statutory obligation when it fails to transmit the record in its entirety. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078. This default of duties is particularly egregious in the present appeal where the BOR has had multiple attempts to ensure it could provide a complete record to this board and the integrity of the county appellees' proceedings have been criticized by the court due to their failure to comply with their statutory duties. *L.J.*

Smith, Inc. v. Harrison Cty. Bd. of Revision, 140 Ohio St.3d 114, 2014-Ohio2872. Nevertheless, parties have been given the opportunity to cure any deficiency at the merit hearing before this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To satisfy this burden, an appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, ***." Id. at ¶5-6. (Parallel citations omitted.)

An auditor is required to value each separate parcel of real property at its taxable value, and "[i]f the fee of the soil of a tract, parcel, or lot of land is in any person, natural or artificial, and the right to minerals therein in another, the land shall be valued and listed in accordance with such ownership in separate entries, specifying the interest listed, and be taxed to the parties owning the different interests." R.C. 5713.04. The auditor must also classify each separate parcel of real property according to its "principal, current use" for purposes of determining the

appropriate tax reductions. R.C. 5713.041. For purposes of this section, there are only two classifications, residential/agricultural or nonresidential/agricultural, and "minerals or rights to minerals shall be classified as nonresidential/agricultural real property." Id. When mineral rights are listed and taxed separately from surface rights that are classified as residential/agricultural, the minerals or rights thereto should be classified separately regardless of whether title is held by the same person or persons. Id. Because these mineral rights are considered real property, they are subject to the auditor's duty to determine the true value of the fee simple estate as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions. R.C. 5713.03. Although R.C. 5713.051 sets forth an alternative valuation methodology for oil and gas reserves that constitute real property, this section applies only to those reserves "with respect to a developed and producing well that has not been the subject of a recent arm's-length sale." R.C. 5713.051(B)-(C). There is no indication that the reserves in the subject property meet this description. Thus, the auditor should determine the value of the subject parcels in the same manner as any other real property valuation. R.C. 5713.03; Ohio Adm. Code 5703-25-11(I) ("Coal and minerals shall be valued in the same manner and on the same price level as other real property.").

Timmons has questioned the auditor's decision to tax the parcels in 2013, when they were first severed in 1980 and had never been assessed real property tax. In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, the court described the auditor's duties to value and assess taxes against real property in the county pursuant to R.C. 5713.01(B) and R.C. 5713.03. These duties instruct the auditor reappraise property values once every six years and perform an update at the three-year interim point. Id. at ¶19; R.C. 5713.01, 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). The

court explained that R.C. 5713.01(B) directs an auditor to "'revalue and assess at any time all or any part of the real estate in such county *** where the auditor finds that the true or taxable values thereof have changed.'" *AERC Saw Mill*, supra, at ¶19. The court clarified that "[t]his duty might be triggered by an arm's-length sale" or "the reporting of an improvement or casualty to the property," for example. Id. The court clarified that "[t]ypically, the auditor does carry over the value from the first year of a triennium to the next year, unless some event that triggers a need to change the valuation." Id. at ¶32. Nevertheless, an auditor has the authority, if not the duty, to adjust a property's values whenever he or she finds that its true or taxable values have changed even within an interim period. Thus, it was within the auditor's purview to assess the subject property when he realized that the parcels had not been properly valued.

Because an auditor is presumed to have acted consistent with Ohio law when he or she certifies a value on the tax list and duplicate, it is not a high bar to show that he or she properly exercised this authority. Compare *Johnson v. Clark Cty. Bd. of Revision*, 2nd Dist. Clark No. 2013 CA 32, 2014-Ohio-329 (remanding a matter to the BOR where the record did not include any reliable and probative support that the auditor's initial calculation of the current agricultural use value of a property correctly applied relevant statutory authority); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543 (holding that this board could not reinstate the auditor's value where it was clearly negated because the record showed it based on an incorrect completion percentage). As such, it is well-settled that an appellant bears a burden not to merely challenge the auditor's valuation, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. See, e.g., *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶10 ("The county, therefore, needed to present evidence supporting the fiscal

officer's valuation only if Schutz first carried his burden by presenting evidence of a different value for the property."). In this case, Timmons has relied on legal argument and presented no such evidence of value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

Finally, we acknowledge Timmons' argument regarding unequal taxation of minerals when they have been severed from the surface rights but decline to address it here. While the Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195 (1994).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2013, were as follows:

PARCEL NUMBER 26-0000269.200

TRUE VALUE

$32,430

TAXABLE VALUE

$11,350

PARCEL NUMBER 26-0000270.200

TRUE VALUE

$24,170

TAXABLE VALUE

$8,460

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1258 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

JOE ECKERT
4737 REED RD
SUITE 150
UPPER ARLINGTON, OH 43220

Entered Monday, July 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Columbus City Schools Board of Education ("BOE") appeals to this board from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel number 010-134863-00, owned by Joe Eckert, for tax year 2017. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the auditor pursuant to R.C. 5717.01, and the BOE's written argument.

The subject property is improved with a single-family residence. The Franklin County

Auditor valued the property at $114,000 for tax year 2017. Mr. Eckert, the property owner, filed a complaint seeking a decrease in value to $64,847, based on his purchase of the property for that amount in November 2014. The BOE filed a countercomplaint seeking to maintain the auditor's value. At the BOR hearing, Mr. Eckert testified that he has made no major improvements to the property since his purchase and presented comparable sales from the multiple listing service ("MLS") to support his reduction in value. He testified the property is used as a rental property, and that it was rented at approximately $900 per month. Counsel for the BOE argued against reliance on the November 2014 sale, as it is presumptively remote from tax lien date, and objected to reliance on the comparable sales given Mr. Eckert's lack of personal knowledge about the circumstances of those sales or the conditions of the properties.

At the BOR's decision hearing, the auditor's representative recommended the value of the property be decreased to $82,900, using a gross rent multiplier ("GRM") applied to the actual rental income of $900 per month. The statutory transcript includes a GRM sheet ("summary median GRM by NBHD"); from the BOR's hearing notes, we glean that the GRM for neighborhood 045 was applied to the subject's actual rental income to derive the auditor's recommended value. The BOR issued a decision reducing the value of the property to $82,900, and the BOE appealed to this board. In its written argument on appeal, the BOE argues the BOR's reduction is not properly supported by the record.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The subject property sold to Mr. Eckert in

November 2014, twenty-six months prior to tax lien date. Although the Supreme Court has not set a bright line to establish when a sale is sufficiently close to tax lien date to be presumed recent, in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, the court held that a sale that occurs more than twenty-four months prior to tax lien date, where the auditor has conducted a sexennial reappraisal of property in the county in the interim time period, the sale is presumed *not* to be recent to tax lien date. Id. at ¶26. Such is the case here. The Franklin County Auditor conducted a sexennial reappraisal of real property in the county for tax year 2017. Mr. Eckert's purchase of the property twenty-six months prior, in November 2014, is therefore presumed not to be recent to tax year 2017 and therefore not the best evidence of the property's value as of January 1, 2017.

Although Mr. Eckert presented comparable sales in support of his requested value, we find they constitute unreliable hearsay and are therefore not competent evidence of value. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶19. He testified that he had not viewed the interior of any of the properties, nor did he have any knowledge of the circumstances of the sales. We likewise have little information about those sale comparables which we presume were included in the statutory transcript because they were relied upon by the auditor in recommending his value, as indicated by the auditor's representative during the BOR's decision hearing. Without knowing the circumstances of those sales, or the comparability of those properties to the subject property on tax lien date, we find the sales data is of little utility in our determination of value.

We therefore agree with the BOE that Mr. Eckert failed to present competent and probative evidence in support of his requested reduction in value. However, because the BOR reduced value based on its own evidence, i.e., its GRM data, we proceed to evaluate its decision

to reduce value to $82,900, cognizant of our duty to independently weigh evidence in the record without giving the BOR's decision any presumption of validity. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7 ("our case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value"); *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028.

The only evidence in the record to support the BOR's reduction in value is a one-page GRM data sheet containing a list of summary median GRMs by neighborhood. In the absence of any testimony about the origin of such data, or further explanation of such data, we find the information therein of little value in our determination of value. For example, the BOR hearing notes indicate that neighborhood 045 was chosen for the subject property. The record contains no information about whether such designation is appropriate for the subject. Likewise, as this board has repeatedly noted, the expense ratios and general comparability of properties from which gross rent multipliers are derived is important to any evaluation of the resulting value figure. See, e.g., *Edgewood Manor of Westerville, Inc. v. Franklin Cty. Bd. of Revision* (Sept. 8, 2006), BTA No. 2004-T-706, unreported. See also *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845; *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384. The Appraisal of Real Estate (14th Ed.2013) cautions that gross rent multipliers should be derived from properties comparable to the one being appraised in terms of physical, locational, and investment charactertistics, and income data, and notes that such multipliers are "sensitive valuation tools" where small differences "may have a great effect on the resulting value indications." Id. at 507-508. The absence of information about the data underlying the BOR's GRM data sheet leaves this board unable to determine whether the value

derived therefrom is appropriate for the subject property. We therefore find the BOR's reduction is not supported by the record.

In the absence of any other evidence of value, we must reinstate the auditor's initial value of the property. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919, ¶21-22. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$114,000

TAXABLE VALUE

$39,900

OHIO BOARD OF TAX APPEALS

DAVID POND, (et. al.),	)	
	)	CASE NO(S).
Appellant(s),	)	2018-1122, 2018-1123, 2018-1125,
	)	2018-1126
vs.	)	
	)	
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DAVID POND
5130 BLAZER PARKWAY
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

HILLIARD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, July 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

David Pond appeals from four decisions of the Franklin County Board of Revision ("BOR"). Before this board's hearing, the BOR notified this board that Mr. Pond did not serve his notices of appeal on the BOR as required by R.C. 5717.01. The record contains no evidence Mr. Pond did properly serve the BOR, and, at this board's hearing, Mr. Pond did not dispute he failed to serve the BOR. Hearing Record at 22.

R.C. 5717.01 provides, in relevant part:

"Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals **and with the county board of revision**." (Emphasis added.)

The Ohio Supreme Court has constantly held the requirements of R.C. 5717.01 are mandatory, and "that compliance therewith is essential to vest" this board with jurisdiction. *McGrath v. Hocking Cty. Bd. of Revision* (Sept. 28, 2010), BTA No. 2010-V-1280, unreported (citing *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 192 (1989)). This board is without jurisdiction, and must dismiss, any case filed wherein a party does not properly serve the BOR. Here, the record is clear the BOR was not properly served. Therefore, these cases must be dismissed.

While we cannot reach the merits, we would not have found a change in values was appropriate. Mr. Pond primary argument was his properties were overvalued by the auditor in relation to nearby properties. See *Pond v. Franklin Cty. Bd. of Revision* (Apr. 4, 2019), BTA No. 2018-1127, unreported. The Ohio Supreme Court has been clear, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). Mr. Pond also argued the properties have negative characteristics. However, a party must go further by providing appraisal evidence to show how those characteristics affect value. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996).

Based upon the foregoing, we find we lack jurisdiction over these matters. As such they must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

GORODYUK ESTATE LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1270 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GORODYUK ESTATE LLC
Represented by:
IRINA GORODYUK
OWNER
1245 MEMORY LANE
COLUMBUS , OH 43209

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, July 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, Gorodyuk Estate, LLC ("Gorodyuk") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 010-006005, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property consists of 0.77 acres of land improved with a 2,500-square-foot commercial building. The auditor initially assessed the subject's total true value at $84,000. The appellee board of education ("BOE") filed a complaint with the BOR seeking an increase in value to $255,000. The BOR convened a hearing, at which the property owner relied on evidence of two December 22, 2017 sales of the subject property, asserting that the latter of which established the subject's true value as of the tax lien date. The owner did not appear at the hearing. Indicating that it accepted the sale price, the BOR issued a decision adjusting the subject's value to $255,000. From this decision, Gorodyuk filed the present appeal. Initially, Gorodyuk requested that the matter be considered through the board's small claims process and without a hearing. Upon motion from the BOE, this board reassigned the appeal to our regular docket and scheduled it for a hearing. Although the property owner did not appear at the hearing, we construe the fact that no hearing was requested as a waiver and consider the matter based upon the record below. The BOE also waived the opportunity to appear before this board on this matter.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools*

Bd. of Edn. v. Franklin Cty. Bd. of Revision, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[4] In the present appeal, the record contains information regarding two sales, both of which took place on December 22, 2017. The first transaction took place between SB Columbus LLC and W J Holdings LLC for a recorded sale price of $140,000. According to the deed that was recorded that day, the instrument was executed to complete a land installment contract dated October 10, 2014 (which was recorded on October 20, 2014). Subsequently, W J Holdings LLC transferred the property to Gorodyuk for the reported sale price of $255,000. Although the BOR apparently accepted the second sale as the best evidence of value, there is no indication that the first sale was considered or why it was rejected, despite being closer in time to the tax lien date.

[5] In *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, the court held that "[w]hen a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes." Id. at paragraph one of the syllabus. Accordingly, before we consider the sale to Gorodyuk, we must determine the reliability of the prior transfer.

[6] Relying on *HIN*, the court, in *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, held that a sale that was negotiated seven years before it was consummated was nevertheless recent and arm's-length. The court explained that it "chose the date that the conveyance-fee statement was filed because by law, the auditor must be informed about the sale as an event affecting the value of the property; indeed, the statutes require the filing of the conveyance-fee statement in part so that the auditor has notice of the sale for tax-valuation purposes." Id. at ¶20. We acknowledge that this board subsequently distinguished sales by land installment contract from the transaction in *N. Royalton* and found the date the land contract was consummated to be most relevant for the determination of

recency. See, e.g., *Alliance City School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision* (Oct. 3, 2014), BTA No. 2013-6342, unreported. However, the court has more recently reaffirmed the holding from *HIN* that "the effective date of a sale for real-property-valuation purposes is the date the conveyance-fee statement is filed in the county auditor's office." *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, citing *HIN* at ¶24. Accordingly, we find that the relevant date for the first sale should be the date the conveyance fee statement was filed with the auditor (rather than the date the land installment contract was entered into), making it more recent in time to the tax lien date than the transfer to Gorodyuk. Finally, while the BOE has relied on the subsequent sale, there has been no express challenge regarding the reliability of the prior transaction. See *Terraza 8*, supra (holding that while not conclusive evidence of value, a recent, arm's-length sale constitutes the best evidence of a property's value). Accordingly, we find that the transfer from SP Columbus to W J Holdings provides the best evidence of a property's value.

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$140,000

TAXABLE VALUE

$49,000

OHIO BOARD OF TAX APPEALS

RAMI NWAISSER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-4, 2019-22
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RAMI NWAISSER
OWNER
907 CHANCELLOR CT.
FLORENCE, KY 41042

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Thursday, July 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers B02 01119 0001 and B02 01119 0003, for tax year 2017. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] Parcel number B02 01119 0001 is improved with a commercial building that was occupied by a restaurant on the tax lien date but has been vacant since the restaurant left in August 2017. Parcel number B02 01119 0003 is a 2.11-acre wooded lot that is zoned for commercial use. The auditor initially valued these properties at $584,700 and $122,890,

respectively, and the appellant filed complaints seeking reductions to $221,100 and $27,500, respectively. The board of education ("BOE") filed countercomplaints in support of the auditor's values. The BOR convened a hearing, at which the appellant testified regarding his February 2017 purchases of the properties, which formed the bases for his opinions of value. The appellant explained that the improved property had been unsuccessfully listed for sale, and the former owner decided to attempt to sell it via an auction. The appellant stated that the seller had a right of refusal but agreed to the appellant's bid, which was the highest among multiple different bidders. The appellant also confirmed that the property was not in foreclosure and the seller was not in bankruptcy. The appellant further testified that he also purchased the unimproved lot from the same seller via auction. The BOE cross-examined the appellant and noted an absence of documentation to confirm the circumstances of the sale but made no express challenges to the reliability of the transactions to establish the value of the subject properties and did not present independent evidence of value. The BOR issued decisions retaining the auditor's values, which the appellant appealed to this board, attaching the respective settlement statements and photographs of the properties. At this board's hearing, the appellant provided additional testimony about the sale and had the documents attached to his notices of appeal formally admitted into the record. The BOE has not participated on appeal, and the county appellees did not appear at the hearing or submit written argument.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale

was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8,L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[4] It is undisputed that the appellant purchased the subject properties from the Yale Family Limited Partnership and Lewel LLC (each seller having had a partial interest in the properties prior to the sale) on February 21, 2017 for $221,100 and $27,500, respectively. Although no one has formally challenged whether the sales were arm's-length, the fact that the transactions took place via an online auction was discussed during the BOR hearing. When a property transfers in such a manner, the appellant is required to satisfy a "'heavier burden'" to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, *** ¶43." *Lunn*, supra, at ¶22. See, also, *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431 (holding that although the sale was presumptively invalid, the proponent of the sale successfully rebutted this presumption through the presentation of additional evidence). Thus, where a property sells via auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction. In this case,

there is unrefuted testimony that it was not a forced sale, the property was advertised, and there were multiple bidders. Under these circumstances, we find that the appellant has met his burden to show the February 2017 transfers were arm's-length sales, and the purchase prices furnish the best evidence of the true value of the subject properties.

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER B02 01119 0001

TRUE VALUE

$221,100

TAXABLE VALUE

$77,390

PARCEL NUMBER B02 01119 0003

TRUE VALUE

$27,500

TAXABLE VALUE

$9,630

OHIO BOARD OF TAX APPEALS

SPRINGFIELD CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. CLARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1618 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SPRINGFIELD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - CLARK COUNTY BOARD OF REVISION
Represented by:
WILLIAM D. HOFFMAN
ASSISTANT PROSECUTING ATTORNEY
CLARK COUNTY
50 EAST COLUMBIA STREET, SUITE 449
SPRINGFIELD, OH 45502

EF HUTTON AMERICA, INC.
Represented by:
CHRISTOPHER DANIELS
ONE MAIN STREET
SPRINGFIELD, OH 45502

Entered Thursday, July 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals three decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 340-07-00034-104-057, 340-07-00034-103-33, and 340-07-00034-103-34, for tax year 2016.

This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a roughly 150,000-square foot, 11-story office building. The auditor initially assessed the subject's total true value at $2,361,270. The BOE filed a complaint with the BOR seeking an increase in value to $8,400,000. The BOR convened a hearing, at which the property owner did not appear, and the BOE presented evidence of a September 2016 sale to establish the value of the subject property for tax year 2016. The BOR initially issued decisions increasing the value to the reported $8,400,000 sale price but vacated its decisions and rescheduled the hearing after it received some communication from the owner. At the second hearing, the BOE was again the only party present and again relied on the sale as evidence of value. The BOR issued decisions, this time retaining the auditor's value for the property. From these decisions, the BOE filed the present appeal. At this board's hearing, the BOE again presented evidence of the sale, maintaining that the value should be increased consistent with the sale price. The BOE also presented an appraisal report dated August 13, 2016 that it had received in discovery, observing that the prospective "leased fee" value was $15,200,000 upon completion and stabilization, which was estimated to occur on or before September 7, 2016. The county appellees indicated that they did not contest the increase, as the BOR's intent in issuing the decisions "retaining" the property's value was to retain the increase from its initial decision letters based on the sale price. The property owner again did not appear at the hearing.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of*

Revision, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, it is undisputed that the subject property transferred from SpringForward to EF Hutton America, Inc. on September 2, 2016 for $8,400,000. There has been no express challenge to any aspect of the transaction, and we find that reported sale price provides the best evidence of the subject property as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

PARCEL NUMBER 340-07-00034-104-057

TRUE VALUE

$7,337,100

TAXABLE VALUE

$2,567,990

PARCEL NUMBER 340-07-00034-103-033

TRUE VALUE
$613,200

TAXABLE VALUE

$214,620

PARCEL NUMBER 340-07-00034-103-034

TRUE VALUE

$449,700

TAXABLE VALUE

$157,400

OHIO BOARD OF TAX APPEALS

LOUISE A. MANWARING, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-715
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LOUISE A. MANWARING
Represented by:
LOUISE MANWARING
5100 CRYSTAL LAKE RD.
CANAL FULTON, OH 44614

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

Entered Thursday, July 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Louise A. Manwaring, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 1601163, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property consists of 14.4 acres of wooded agricultural land. The auditor initially assessed the subject's total true value at $66,000, and Manwaring filed a complaint with the BOR seeking a reduction in value to $26,400. Manwaring did not appear at a hearing scheduled before the BOR but submitted information regarding the assessed values of nine

agricultural properties located within the same township and school district that are more than 50% wooded. Manwaring asserted that three retained the 2016 values in 2017, three had lower values, and three (including the subject property) experienced an increase in value. Manwaring indicated that the subject's value increased 250% (from $26,400 to $66,000) for tax year 2017 and sought to have the 2016 value reinstated. The BOR also considered a report from an auditor's staff appraiser, who inspected the property for the tax year 2018 countywide reappraisal. Through her report, the appraiser explained that the change in value for 2017 resulted from the removal of an 80% "rear land" adjustment that was in place because the subject is contiguous to other parcels owned by Manwaring that have road frontage. The report also indicated that a 50% "low/wet" adjustment was added to account for water on the property. The BOR issued a decision maintaining the initially assessed valuation, which Manwaring appealed to this board. At this board's hearing, Manwaring submitted evidence regarding the subject property's physical attributes, indicating that the property is landlocked and has a ravine and water. Manwaring again disputed the increase for 2017 and requested to go back to the 2016 value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. While an owner of property is considered an expert and competent to offer an opinion of value the subject real property, to adjust the property's value based on that opinion we must also find that she has provided adequate support. *Johnson v. Clark Cty. Bd. of Revision*, Slip Opinion No.

2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

In this case, we find that Manwaring has failed to support her requested decrease. Initially, we must reject Manwaring's argument that the auditor's value for the subject property from the earlier tax year or other properties reflects the correct assessed value for the year at issue. A property's valuation from one tax year is not competent and probative evidence of value for another tax year. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997). Additionally, the values of other properties are not reliable evidence of value for the subject. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner."). Third, evidence of negative conditions experienced by the subject property due to its topography or any other issue are not sufficient to support a reduction in value. In order to support this type of claim, Manwaring must have demonstrated not only that such factors are present, but also the impact on the value of the subject property. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996). See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). Thus, we find that Manwaring has failed to meet her burden to demonstrate a reduced value for the subject property.

Finally, although the auditor is not required to defend the initial values, we find that the adjustments made for tax year 2017 were consistent with the character of the subject property. Although Manwaring maintains that the property was landlocked, she does not dispute that it is adjacent to other property that does have frontage. As such, it was not improper for the auditor to value the subject as part of the larger economic unit. See *Columbus City Schools Bd. of Edn.*

v. Franklin Cty. Bd. of Revision, 154 Ohio St.3d 146, 2018-Ohio-3254, ¶3, fn.1 (explaining that

it is appropriate to value property as an "economic unit" when land and improvements from a combination of parcels are used for mutual economic benefit). Furthermore, it appears that the auditor's value adequately considers the water that is present on the property.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$66,000

TAXABLE VALUE

$23,100

OHIO BOARD OF TAX APPEALS

WILLIAM S. JOHNSON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-852
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
GREENE COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - WILLIAM S. JOHNSON
Represented by:
WILLIAM JOHNSON
P.O. BOX 62
CLIFTON, OH 45316

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

Entered Tuesday, July 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, William S. Johnson, appeals a decision of the board of revision ("BOR") denying his complaint challenging the auditor's attempt to recoup tax reductions he received for the subject real property, parcel number B42 0005-0012-0-0200-00, for tax years 2015-2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board. We also note that Johnson moved this board to strike an exhibit attached to the transcript and to sanction the Greene County Auditor, David A. Graham, for acting beyond his authority by attaching a document that should not be included in the transcript without the opportunity to more fully examine the statements therein. Because Johnson had the opportunity to

cross-examine Graham about the document, we find that his objection thereto is moot and deny both motions.

The subject property is improved with a single-family home and benefitted from a reduction in taxes from tax year 2010 until tax year 2017, pursuant to R.C. 323.152(A)(1), commonly known as the homestead exemption, and R.C. 323.152(B), also known as the owner-occupancy tax reduction. In May 2011 Johnson filed an original application for tax year 2011 and late application for tax year 2010, which ultimately resulted in a decision from this board finding that he "owned and occupied the subject property as his principal residence" for tax years 2010 and 2011. *Johnson v. Greene Cty. Bd. of Revision* (May 31, 2013), BTA No. 2012-Q-5109, unreported. The auditor had denied the homestead exemption and owner-occupancy reduction for tax years 2010 and 2011 because Johnson owned a property in Clark County that was not disclosed on the Greene County application and for which he also sought the R.C. 323.152 tax reductions for the same years. This board concluded that Johnson owned and occupied the Greene County property as his primary residence while the Clark County property was occupied by his father for those years. Johnson received the homestead exemption and owner-occupancy reduction for this Greene County property until the actions taken by the auditor in 2017 that are at issue in the present appeal.

In the meantime, Clark County had granted Johnson both the homestead exemption and owner-occupancy reduction for the residence he owned there for 2010, which he received for every year until 2016. In 2016, Clark County notified Johnson that based on the Greene County tax reductions, he did not qualify for either the homestead exemption or owner-occupancy reduction for 2010, 2013, 2014, 2015, and 2016. Clark County then attempted to deny the application for 2016 and impose a charge to recoup the reduction for the prior years. This board

issued decisions on the propriety of these actions, finding that the auditor failed to comply with the statutory scheme and reversing the BOR's decisions. *Johnson v. Clark Cty. Bd. of Revision* (Oct. 4, 2018), BTA No. 2017-828, unreported; *Johnson v. Clark Cty. Bd. of Revision* (Oct. 24, 2018), BTA No. 2018-74, unreported. Based on the information that was presented during the course of the Clark County proceedings, the Greene County Auditor notified Johnson that his R.C. 323.152 tax reductions were denied for tax year 2017. The Greene County Auditor also assessed a charge of $1,385.48 to recoup the reduction in taxes Johnson received for tax years 2015 and 2016. Johnson now challenges the Greene County Auditor's authority to do so. During this board's hearing, Johnson confirmed that he did not challenge the denial for 2017.

Throughout all of these proceedings, Johnson has claimed that he is not limited to R.C. 323.152 tax reductions for only a single property and that, essentially, he could claim the reductions for any residential property he owned and was not occupied by another individual. Johnson contends that the only "residence" requirement is that he is domiciled in the state. The auditor, on the other hand, maintains that Johnson is restricted to only one "primary residence," and is, therefore, limited to only one property receiving the R.C. 323.152 tax reductions.

In this board's most recent decisions regarding the Clark County exemption, we went into detail regarding the statutory scheme for the homestead exemption and owner-occupancy reduction. Generally, the tax reductions in R.C. 323.152 apply to any" homestead," which is defined as "[a] dwelling *** owned and occupied as a home by an individual whose domicile is in this state and who has not acquired ownership from a person, other than the individual's spouse, related by consanguinity or affinity for the purpose of qualifying for the real property tax reduction provided in section 323.152 of the Revised Code." R.C. 323.151(A)(1)(a). To receive the full reduction under R.C. 323.152(A) (commonly, the homestead exemption), the

owner of a "homestead" must meet certain additional requirements, and will also receive a partial exemption (commonly, the owner-occupancy reduction). In order to obtain these tax reductions, an owner is required to affirmatively file an application with the appropriate county auditor and may also submit a late application for the preceding year. R.C. 323.153(A). Under this framework, once an application is approved, it functions as a continuing application for each subsequent year, until it is formally denied by the auditor using the process set forth in R.C. 323.154 or when an applicant notifies the auditor that he or she is no longer eligible for the tax reduction as required by R.C. 323.153(C)(1) ("If, in any year after an application has been filed under division (A)(1) or (2) of this section, the owner does not qualify for a reduction in taxes on the homestead or on the manufactured or mobile home set forth on such application, the owner shall notify the county auditor that the owner is not qualified for a reduction in taxes.").

R.C. 323.153(C)(3) provides a mechanism for the recoupment of the partial reduction for an owner occupant if the auditor later discovers that the owner was not entitled to the reduction and failed to notify the auditor, though, as the auditor concedes, there is no similar reference to recoupment of a full homestead exemption. Nor is there any reference to an auditor's ability to retroactively invalidate a prior year's application or continuing application. Consequently, regardless of the owner's intent in doing so, if the auditor discovers that the recipient of a homestead exemption failed to notify the auditor that he or she no longer qualified, there is no mechanism for the auditor to recoup the reduction in taxes from a homestead exemption. But see R.C. 323.153(D), (E); 323.99 (providing that an individual who knowingly makes a false statement for purposes of obtaining a reduction in real property taxes or failing to notify the county auditor of changes that have the effect of maintaining or securing

a reduction in taxes may be charged with a misdemeanor in the fourth degree and be prohibited from receiving any reduction in taxes for a period of three years following a conviction). Thus, we must find that the Greene County Auditor's attempt to recoup $1,271.24 from Johnson was improper as he lacked the necessary authority to do so.

We now consider the $114.24 that the auditor has attempted to recoup for the owner-occupancy reduction he claims that Johnson improperly received for tax years 2015 and 2016. In order to recoup the reduction in taxes, the auditor must show two things: (1) that the owner of a property was not entitled to the owner-occupancy reduction, and (2) that the owner failed to notify the auditor as required by R.C. 323.152(C)(1).

In this case, by signing his initial application, Johnson declared under penalty of perjury that the Greene County property was his principal place of residence for 2010 and 2011. Based on this assertion and additional evidence submitted during the previous proceedings, this board previously held that the Greene County property was Johnson's primary residence when he filed the initial application, as his father was residing in the Clark County property. As we look to the tax years at issue, it is undisputed that Johnson spent every night that he was not on vacation in the Clark County property. Despite this, Johnson maintains that he continued to occupy the Greene County property as a residence through 2015 and into 2016 and, consequently, was under no obligation to notify the auditor of any change. Thus, if we find that Johnson no longer qualified for the reduction, there is no question that he failed to notify the auditor that the Greene County property was no longer a "homestead" for purposes of R.C. 323.152.

Although the parties disagree as to whether the Greene County property qualifies as a "homestead," there is no dispute about the activities that do and do not take place there. The property is a single-family home, which Johnson formerly utilized as his primary residence and

has not been converted to a different use, though Johnson has asserted it is in such poor condition that it is not habitable. As of January 1, 2015, Johnson no longer slept at the property, but continued to use it as his address for purposes of filing his federal income tax return, voting, and the Ohio Bureau of Motor Vehicles into at least some portion of 2016.

Johnson claims that the only residency requirement for receiving the R.C. 323.152 tax reductions is that the owner be domiciled in Ohio. After a review of the full text of the definition for homestead, we acknowledge that Johnson is correct that it does not expressly preclude an individual from receiving the tax reduction for multiple properties. We further conclude, however, that Johnson's reading of the definition is an oversimplification and fails to give meaning to the provision in its entirety.

In pertinent part, the definition of a "homestead" pursuant to R.C. 323.151(A) includes five separate criteria: (1) the property must be a dwelling, (2) the property must be owned by an individual, (3) the property must also be *occupied as a home* by that individual, (4) that individual must be domiciled in Ohio, and (5) that individual must not have acquired ownership from a person, other than the individual's spouse, related by consanguinity or affinity for the purpose of qualifying for the R.C. 323.152 tax reductions. Although not explicit in the statute, the definition of homestead includes multiple references that a homestead is not simply a residential property that is occupied by the owner's physical possessions or visited by the owner for several hours during the day. Rather, a homestead is a dwelling that is occupied as a home, i.e., the owner's abode. Based on its common meaning, a property is occupied as a home when it is a residence where the owner stores his or her physical belongings, sleeps at night, perhaps shares a meal with friends, and intends to do so for the foreseeable future. While the homestead is not defined as the individual's domicile, the two are related, which is presumably why the

commissioner has included in the application form (and instructions thereto) a certification that the subject property is the applications "primary residence," and not simply a residential property owned by the individual. For this reason, although we find nothing in the statute to limit the availability of the R.C. 323.152 reductions to only one residence, we do find that the requirement that the owner utilizes the property as one's home necessitates more than simple physical occupation of the property and includes some additional use that is consistent with being a "home." Therefore, despite maintaining the property as a legal residence for several purposes, we find that at some point prior to January 1, 2015, Johnson ceased using the subject property as a home and it no longer qualified as a homestead.

Johnson next argued that even if the Greene County property did not constitute a "homestead" for 2015 and 2016, he was not required to notify the county because his use of the property did not change since the time he filled out the initial application. We disagree. This board explicitly found based on the sworn statements and evidence provided by Johnson during the proceedings for tax years 2010 and 2011 that the Greene County property was his primary residence and qualified as his homestead while the Clark County property was occupied as a home by his father during that time. Thus, Johnson's claims in the present appeal are contrary to the findings in our prior decision, which was based on the case he presented at that time and is now settled fact for that year. Consequently, if Johnson was occupying the subject property as his homestead in 2011 and was not occupying the subject as his homestead on January 1, 2015, at some point, a change occurred that required Johnson to notify the auditor that the property was no longer eligible for the tax reductions. Due to Johnson's failure to do so, the auditor isnow able to recoup the reduction in taxes for the owner-occupancy reduction for tax years 2015 and 2016, which based on the evidence submitted at the hearing before this board, totaled

$114.24.

For the reasons stated above, we hereby reverse the BOR's decision to uphold the auditor's attempt to recoup the reduction in taxes for the homestead exemption but affirm the BOR's decision with respect to the owner-occupancy reduction.

OHIO BOARD OF TAX APPEALS

GUARDIAN SAVINGS BANK, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-201 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GUARDIAN SAVINGS BANK
Represented by:
GUARDIAN SAVINGS BANK
2774 BLUE ROCK RD
CINCINNATI, OH 45239

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

Entered Friday, July 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant purportedly challenges a decision to assess a late payment penalty for real property tax for the second half of tax year 2017. The county appellees have filed what we interpret as a motion to dismiss for premature filing. By way of the motion and supporting documentation, the county appellees assert that the appellant failed to first file an application with the county treasurer to determine whether remittance of the late payment penalty was appropriate and that the appellant's request for remission was granted after the application was properly filed. See R.C. 5715.39.

R.C. 5715.39 lays out the process by which a taxpayer may challenge a late payment

penalty for real property taxes. A taxpayer must first file an application with the county treasurer who consults with the county auditor to determine whether the taxpayer has satisfied any of the five circumstances enumerated in the statute to justify remission of the late payment penalty. See R.C. 5715.39(B)(1)-(B)(5). If the county auditor determines that remission of the penalty is not warranted, the county auditor must submit the application to the county board of revision for further consideration. See R.C. 5715.39(C). If the county board of revision denies the application for remission of the late payment penalty, it must provide notice to the taxpayer by certified mail. See R.C. 5715.20. The taxpayer may then appeal the decision to this board, but such appeal must be filed notice of the decision of the county board of revision *after* is mailed and must be filed with this board and the board of revision within thirty days. R.C. 5717.01.

Based upon the foregoing, we find that the taxpayer failed to follow the proper process to challenge the assessment of the late payment penalty. The record is devoid of any evidence to suggest otherwise. It should be noted that the documentation provided with the county appellees' motion demonstrates that the taxpayer's request for remission of the late payment penalty was actually granted subsequent to the filing of this appeal, which suggests that there is no longer a justiciable issue in this matter. As such, we find that this appeal is premature and grant the county appellees' motion to dismiss.

OHIO BOARD OF TAX APPEALS

CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
	)	CASE NO(S). 2018-1320
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
CHRISTIAN M. WILLIAMS
ATTORNEY AT LAW
PEPPLE & WAGGONER, LTD.
CROWN CENTRE BUILDING
5005 ROCKSIDE ROAD, SUITE 260
CLEVELAND, OH 44131-6808

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
MARRETT HANNA
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

VJNC PROPERTIES, LLC
SHARI CAVALLARO OWNER
P.O. BOX 2200
STOW, OH

Entered Friday, July 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon the Cuyahoga Falls City Schools Board of Education's ("BOE") appeal from a decision of the Summit County Board of Revision ("BOR")

determining the value of parcel numbers 02-12261 and 02-12262 for tax year 2017. We decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, and the parties' written arguments.

The subject property is improved with an eleven-unit apartment complex. The fiscal officer initially valued the property at $280,070 for tax year 2017. The BOE filed a complaint seeking an increase in value to $430,000, to reflect the price for which the property sold in April 2017, and presented the conveyance fee statement and deed as evidence of the sale. At the BOR hearing, Shari Cavallaro appeared on behalf of owner VJNC Properties LLC. Ms. Cavallaro testified that she and her husband purchased the property in an arm's-length transaction for the stated purchase price; however, she indicated personal property was included in the sale price and that the true condition of the property was unknown at the time of sale. Although the property appeared to be in good condition when it was purchased, Ms. Cavallaro indicated numerous defects were discovered after purchase, and that repairs of $70,000 need to be made to the property. When questioned by members of the BOR, Ms. Cavallaro was unable to opine a value for the personal property, i.e., the appliances in each unit and two commercial washers and dryers. She repeatedly acknowledged that they had overpaid for the property due to their own lack of due diligence. She also presented comparable sales compiled by a family member who is a realtor and argued that such sales, and the values of nearby properties, demonstrate that the sale price was above the property's market value. Counsel for the BOE argued that any defects were known, or ascertainable, at the time of sale, and that the negotiated sale price is the best evidence of the property's value.

After considering the evidence and arguments, the BOR voted to increase the value of the property to $360,000 based on the sale and the condition of the property.

The BOE appealed to this board, again arguing that the $430,000 sale price is the best evidence of value.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. We are also mindful that, where "the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. See also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7 ("our case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

There is no dispute that the subject parcels were the sale of a recent, arm's-length sale, and basic documentation of that sale was presented by the BOE. The burden therefore falls to the opponent of the sale – the owner – to rebut the presumption that the sale is the best evidence of value. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. See also *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855, ¶ 10-11. The owner's argument against the sale in this matter is that property defects were present, but unknown, to the buyers at the time of sale. However, Ms. Cavallaro testified at the BOR hearing that the buyer did not have a property inspection performed prior to the sale, and that she and her husband failed to thoroughly inspect the property prior to the purchase. As this board has repeatedly noted, "a negotiated purchase price is not invalidated

merely because a purchaser later believes he made a bad deal." *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported. See also *Bd. of Edn. of the Huber Hts. City Schools v. Montgomery Cty. Bd. of Revision* (Oct. 21, 2008), BTA No. 2006-A-1742, unreported ("A bad investment decision does not equate to a failure to act in one's own self interest.").

The owner presented comparable sales data at the BOR hearing to support its argument that it overpaid for the subject property. However, the only witness at the hearing, Ms. Cavallaro, had no personal knowledge of the circumstances of the sales. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶19 ("usually the owner may not testify about comparable properties, because that testimony would be hearsay.") While MLS listing data was provided, several of the properties, including two four-unit buildings and one five-unit building, appear to differ substantially from the subject property. In the absence of any adjustments of those sales by an appraiser, we are unable to rely on them as indicative of value. We further note that two of the comparables had not yet sold; this board does not find a property's listing price indicative of market value. See *Kaiser v. Franklin Cty. Aud.*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶12. Finally, we find the comparison to the fiscal officer's valuation of the comparable properties is not probative of the subject property's value. As the court stated in *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996), "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." In sum, we find the information about purportedly comparable properties does not rebut the presumption that the April 2017 sale price is the best evidence of value.

We likewise reject any reliance on the owner's evidence of repair estimates. Initially, we

note that Ms. Cavallaro indicated during the BOR hearing that the estimates provided were not complete, and that other work was being done to the property beyond what was represented in the estimates. Further, the Supreme Court has repeatedly rejected the notion that dollar-for-dollar costs directly correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588. Without an appraisal that quantifies the effects the alleged defects have on property value, we find the evidence of repairs does not rebut the presumption accorded the sale.

Based upon the foregoing, we find the owner has failed to provide competent and probative evidence to rebut the presumption that the April 2017 sale price is the best evidence of the property's value. Although we acknowledge the BOR valued the property at an amount lower than the full sale price ($360,000), we reiterate that this board reviews the use of a sale price to establish value de novo. *Dublin City Schools*, supra. In its decision recording, the BOR simply states that its decision is based on the sale and condition. There is no indication how the $360,000 value was derived or on what basis. Without such information, we are unable to rely on the BOR's determination of value. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶35." (Parallel citation omitted.)).

We therefore find that the BOE has met its burden on appeal and that the April 2017 sale price is the best evidence of value. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 02-12261

TRUE VALUE

$389,010

TAXABLE VALUE

$136,150

PARCEL NUMBER 02-12262

TRUE VALUE

$40,990

TAXABLE VALUE

$14,350

OHIO BOARD OF TAX APPEALS

PAT NOZARI TRUSTEE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1309
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PAT NOZARI TRUSTEE
Represented by:
SHAHROKH MINOUI
BENEFICIAL OWNER
P.O. BOX 16272
COLUMBUS, OH 43216

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, July 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 040-003571, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is single-family home, and the auditor initially assessed its total

true value at $106,300. The property owner filed a complaint with the BOR seeking a reduction in value to $38,500. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. The BOR convened a hearing, at which the property owner relied on evidence of a March 26, 2015 sale of the subject property for $38,500, including testimony from Shahrokh Minoui, the owner's beneficiary and the purchaser in the March 2015 sale. Minoui testified that the property was listed on the open market and he was involved in two rounds of bidding because the seller received 12 other offers on the property. Minoui described the condition of the property, noting it was vacant at the time of the sale but required only trash removal to make it habitable. Minoui also explained that the apartment complex next door was "rowdy" and discouraged potential tenants from occupying the subject property. He explained that occupancy has been sporadic because the property was functional but outdated. The BOE relied on cross-examination of Minoui and noted that the trash removal took place between the sale and the tax lien date, objecting to photographs that were submitted to demonstrate the condition of the property. The BOR issued a decision reducing the initially assessed valuation to $81,200, applying a gross rent multiplier to the reported rental rate but not addressing the reliability of the sale. From this decision, the property owner filed the present appeal. Minoui again appeared before this board in support of the requested reduction. The BOE was present to cross-examine Minoui but offered no independent evidence of value or challenge to the reliability of the sale.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of*

Revision, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, it is undisputed that the subject property transferred from The Bank of New York Mellon to Shahrakh Minoui on March 26, 2015 for $38,500. Minoui's testimony regarding the exposure to the market was corroborated by the documents provided, including the property's listing, which indicated the property spent 19 days on the market, and purchase agreement, which demonstrated that Minoui's purchase price was higher than his initial offer. There has been no express challenge to any aspect of the transaction, and we find that reported sale price provides the best evidence of the subject property's value as of the tax lien date. Because there has been no rebuttal to the sale, we need not address the basis for the BOR's reduction.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$38,500

TAXABLE VALUE
$13,480

OHIO BOARD OF TAX APPEALS

GUARDIAN SAVINGS BANK, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-203 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GUARDIAN SAVINGS BANK
Represented by:
GUARDIAN SAVINGS BANK
2774 BLUE ROCK RD
CINCINNATI, OH 45239

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

Entered Tuesday, July 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant taxpayer purportedly challenges a decision to assess a late payment penalty for delayed payment of real property tax for the second half of tax year 2017. The county appellees have filed what we interpret as a motion to dismiss for premature filing. By way of its motion and supporting documentation, it appears that the county appellees assert that the taxpayer failed to first file an application with the county treasurer prior to the filing of this appeal, but that the taxpayer's request for remission was granted after the application was properly filed. See R.C. 5715.39.

R.C. 5715.39 lays out the process by which a taxpayer may challenge a late payment penalty for real property taxes. A taxpayer must first file an application with the county treasurer

who consults with the county auditor to determine whether the taxpayer has satisfied any of the five circumstances enumerated in the statute to justify remission of the late payment penalty. See R.C. 5715.39(B)(1)-(B)(5). If the county auditor determines that remission of the penalty is not warranted, the county auditor must submit the application to the county board of revision for further consideration. See R.C. 5715.39(C). If the county board of revision denies the application for remission of the late payment penalty, it must provide notice to the taxpayer by certified mail. See R.C. 5715.20. The taxpayer may then appeal the decision to this board, but such appeal must be filed notice of the decision of the county board of revision *after* is mailed and must be filed with this board *and* the board of revision within thirty days. R.C. 5717.01.

Based upon the foregoing, we find that the taxpayer failed to follow the proper process to challenge the assessment of the late payment penalty for untimely payment of real property tax. The record is devoid of any evidence to suggest otherwise. It should be noted that the documentation provided with the county appellees' motion demonstrates that the taxpayer's request for remission of the late payment penalty was actually granted, which suggests that there is no longer a justiciable issue in this matter. As such, we find that this appeal is premature and grant the county appellees' motion to dismiss.

OHIO BOARD OF TAX APPEALS

GUARDIAN SAVINGS BANK, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-202 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GUARDIAN SAVINGS BANK
Represented by:
GUARDIAN SAVINGS BANK
2774 BLUE ROCK RD
CINCINNATI, OH 45239

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

Entered Wednesday, July 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant taxpayer purportedly challenges a decision to assess a late payment penalty for delayed payment of real property tax for the second half of tax year 2017. The county appellees have filed what we interpret as a motion to dismiss for premature filing. By way of its motion and supporting documentation, it appears that the county appellees assert that the taxpayer failed to first file an application with the county treasurer to determine whether remittance of the late payment penalty was appropriate and that the taxpayer's request for remission has now been granted after the application was properly filed. See R.C. 5715.39.

R.C. 5715.39 lays out the process by which a taxpayer may challenge a late payment penalty for real property taxes. A taxpayer must first file an application with the county treasurer who consults with the county auditor to determine whether the taxpayer has satisfied any of the five circumstances enumerated in the statute to justify remission of the late payment penalty. See R.C. 5715.39(B)(1)-(B)(5). If the county auditor determines that remission of the penalty is not warranted, the county auditor must submit the application to the county board of revision for further consideration. See R.C. 5715.39(C). If the county board of revision denies the application for remission of the late payment penalty, it must provide notice to the taxpayer by certified mail. See R.C. 5715.20. The taxpayer may then appeal the decision to this board, but such appeal must be filed notice of the decision of the county board of revision *after* is mailed and must be filed with this board *and* the board of revision within thirty days. R.C. 5717.01.

Based upon the foregoing, we find that the taxpayer failed to follow the proper process to challenge the assessment of the late payment penalty for untimely payment of real property tax. The record is void of any evidence to suggest otherwise. It should be noted that the documentation provided with the county appellees' motion demonstrates that the taxpayer's request for remission of the late payment penalty was actually granted, which suggests that there is no longer a justiciable issue in this matter. As such, we find that this appeal is premature and grant the county appellees' motion to dismiss.

OHIO BOARD OF TAX APPEALS

OHIO CASUALTY INSURANCE COMPANY, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1528 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OHIO CASUALTY INSURANCE COMPANY
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Wednesday, July 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers A0700-015-000-040, A0700-015-000-042, and A0700-183-000-003, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before the board. We note that appellant filed the present appeal regarding a total of seven parcels, but at the merit hearing, orally moved to dismiss four of the parcels. We hereby

grant the motion and exclude parcel numbers A0700-015-000-041, A0700-015-000-051, A0700-183-000-006, and A0700-229-000-009, the practical effect being retention of the values from the auditor and BOR.

The subject property consists of 93.29 acres of land improved with two single-story buildings totaling 305,000 square feet of office space. The property was originally built for industrial use but was retrofitted and is now utilized as appellant's corporate headquarters. The auditor initially assessed the subject's total true value at $17,311,540, though a portion of the 93.29 acres benefits from a commercial agricultural use valuation ("CAUV"). Appellant filed a complaint with the BOR seeking a reduction in value to $9,844,740. The Fairfield City School District Board of Education ("BOE") filed a countercomplaint in support of the auditor's values. The BOR convened a hearing, at which appellant provided no evidence of value, indicating that the appraisal being prepared was not complete as of the date of the hearing. The BOE likewise presented no independent evidence of value, relying on its argument that appellant failed to meet its burden to prove the value should be reduced. The BOR issued a decision maintaining the auditor's values, which appellant appealed to this board. The BOE has not entered an appearance or participated in this board's proceedings.

At the merit hearing before this board, appellant relied on testimony and a written report prepared by appraiser Donald E. Miller II, MAI, who opined that the value of the subject property was $9,100,000 as of the January 1, 2017. Miller indicated that roughly 24.47 acres of the property were used by the office buildings and that he considered the remaining 68.81 acres as excess land, which he valued separately. Although the subject is an office building, Miller determined that the highest and best use for the land is for industrial use based on its location and zoning. Miller considered five sales and adjusted them to account for differences in

location, configuration, and size. Miller concluded to a value of $45,000 per acre based on the adjusted range ($31,579 to $52,126 per acre), or $3,100,000 total, was attributable to the excess acreage.

Looking next at the buildings and land contributing to their use, Miller explained that as single-story office buildings (274,586 square feet and 30,414 square feet, respectively), they were less-adaptable than a multistory building of similar size, noting that only three single-story buildings with greater than 250,000 square feet can be found in the entire state. Miller relied primarily on the income approach to value, concluding to a market rent of $8.46 per square foot, which he reduced by 20% to account for physical and economic vacancy. After further reducing the effective gross income for operating expenses and reserves, Miller concluded to a $719,312 net operating income. Miller then divided this by 12.02% (9.75% capitalization rate plus 2.27% tax additur), concluding to $6,000,000 (rounded). Miller also performed the sales-comparison approach, adjusting five sales to account for differences location and physical attributes, having determined no economic adjustments were necessary based on conditions of the sales. These adjustments resulted in a range of $15.04 to $26.63 per square foot, with an average of $21.76 per square foot. Based on the functional obsolescence due to the design configuration and external pressures, Miller concluded to $19.00 per square foot, or $5,800,000, which supported his income approach.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who

is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Upon review of appellant's appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported. Furthermore, there have been no challenges made to any aspect of Miller's appraisal. Accordingly, we find that, in the absence of any evidence or argument to the contrary, Miller's appraisal reflects the value of the subject real property as of January 1, 2017. Because Miller did not allocate his value among the parcels, we must remand the matter to the BOR to reflect which portions of the property should be included in the 68.81 acres of excess land ($45,000 per acre), and which are part of the $6,000,000 office portion of the property (including the buildings and 24.47 acres of land). Additionally, various portions of the property benefit from CAUV, which is part of the taxable value determination.

Accordingly, we hereby remand the matter to the BOR to properly allocate Miller's conclusion of value among parcel numbers A0700-015-000-040, A0700-015-000-042, and A0700-183-000-003, with $6,000,000 attributable to the office buildings and land contributing to their use and $3,100,000 attributable to the excess land. The BOR should apply CAUV rates to the appropriate portions of the property when determining the property's taxable value.

OHIO BOARD OF TAX APPEALS

CANTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-1407 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CANTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

420 4TH STREET LLC
Represented by:
STEVEN R. GILL
SLEGGS, DANZINGER & GILL CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, July 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 240759, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a single-tenant office building, and the auditor

initially assessed its total true value at $775,000. The appellee property owner filed a complaint with the BOR seeking a reduction in value to $264,000. The BOE filed a countercomplaint in support of the auditor's assessment. At the BOR hearing, the property owner submitted evidence of a January 2018 sale of the property for $264,000, which reflected that the subject sold via absolute auction after 70 days on the market. Counsel for the property owner made statements regarding a purported prior attempt to sell the property, though no information was submitted regarding the extent to which it was marketed. Likewise, no testimony or documentation was presented to demonstrate participation at the auction or whether there was a minimum bid requirement. The BOE challenged the reliability of the sale and provided no independent evidence of value. The BOR issued a decision reducing the initially assessed valuation to $264,000, having found that the sale was arm's length given the marketing and attendance at the auction, despite a lack of evidence in the record related to these issues. From this decision, the BOE filed the present appeal. This board convened a hearing, at which the BOE argued that the BOR's decision was not supported and that the property owner failed to rebut the presumption that the auction sale was not reliable evidence of value. The property owner waived the opportunity to appear before this board to provide additional evidence regarding the transaction, and the county appellees did not participate on appeal.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. The court has recently explained

that a taxpayer seeking to reduce the value of property based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Once an owner triggers this rebuttable presumption that a sale met all the requirements that characterize true value by presenting unchallenged evidence of sale, however, an opposing party may rebut the utility of the sale by showing that it was not an arm's-length transaction. Id. Once this is done, the burden again shifts to the owner to satisfy a "'heavier burden'" to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, *** ¶43." *Lunn*, supra, at ¶22.

In the present appeal, it is undisputed that the property owner purchased the subject property at an auction. As noted, the court has held that "R.C. 5713.04 establishes a rebuttable presumption that a sale price from an auction is not evidence of a property's value. However, that presumption may be rebutted by evidence showing that the sale occurred at arm's length between typically motivated parties. See *Fenco* [*Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*], 127 Ohio St.3d 63, 2010-Ohio-4907, *** at ¶34." *Olentangy Local Schools*, supra, at ¶40. Thus, where a property sells via auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction. In this case, the property owner did not properly offer any evidence regarding the circumstances of the sale that would allow this board to determine that the auction sale met the characteristics of an arm's-length transaction, instead relying on some documentation to confirm the basic facts of the sale and statements of counsel, which are not evidence. *Corporate Exchange Bldgs. JV & V,*

L. P. v. Franklin Cty. Bd. of Revision, 82 Ohio St.3d 297, 299, (1998). See, also, *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, ¶14 (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel). Even if we were to consider counsel's statements, however, we note that he lacked firsthand knowledge of the sale and was unable to confirm whether or not a minimum bid was required for the sale. Likewise, no evidence was offered regarding participation at the auction, the extent of marketing, or any other information that would establish that the sale price reflected the subject's value despite resulting from an absolute auction. Accordingly, we find that the record lacks sufficient evidence to show that the sale was arm's-length and cannot utilize the transfer as a basis to reduce the subject's value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$775,000

TAXABLE VALUE

$271,250

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-1599 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

48 SOUTH SIXTH STREET, LLC
THE ARLINGTON BANK
4621 REED ROAD
COLUMBUS , OH 43220

Entered Monday, August 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 010-017811-00 and 010-007478-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property consists of roughly 0.1568 acres of land improved with asphalt

paving and utilized as a parking lot. The auditor initially assessed the subject's total true value at $143,400. The BOE filed a complaint with the BOR seeking an increase in value to $321,000. The BOR convened a hearing, at which the BOE presented evidence of a December 2015 sale of the subject property for a total consideration of $321,000. The appellee property owner's managing partner, Edwin Bohamer, appeared to describe the circumstances of the sale. Bohamer testified that prior to December 2015, the property was owned by a family that held title as tenants in common, and that the buyer was leasing the subject property from the family for use by the customers of the buyer's business. When the parties began to discuss lease renewal, the family asked Bohamer if his business would instead be interested in purchasing the lot. The parties then negotiated a sale price, which Bohamer stated was based on the price per acre from another lot that was purchased in roughly 2000, as it was his belief that the market conditions in the area were roughly the same. The family agreed to come down from its asking price to the amount proposed by Bohamer. The BOR convened a decision hearing, during which it voted to retain the property's value but issued a decision reducing the initially assessed valuation to $79,500, though this amount appears to be based on a calculation error. The BOR did not provide a basis for rejecting the sale, which it had relied upon to establish the value of the property for tax year 2015.

From this decision, the BOE filed the present appeal. At the hearing convened before this board, the BOE acknowledged that the sale included a third small parcel that was not included in the complaint and that was valued by the auditor at $13,300. Because of this inadvertent omission, the BOE submitted information regarding the auditor's initial values for all three parcels for tax year 2017 and offered an allocation of the total purchase price based on those values, thereby reducing the sale price allocated to the subject parcels to account for the

roughly 8.5% of the original value that should be attributed to the third parcel. No one appeared on behalf of the property owner.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, it is undisputed that the subject property transferred from John. C. Ryan, trustee, and several additional tenants in common to 48 South Sixth Street, LLC on December 3, 2015 for a total consideration of $321,016 for three parcels. There has been no specific challenge to the reliability of the sale, and we note that there is nothing that demonstrates the parties were not acting in their own best interests. To the contrary, Bohamer testified that he was able to negotiate a reduced selling price based on corroborating evidence that he set forth during the negotiations. Furthermore, there is no indication that the sale is not recent to the tax lien date or that the sale price includes consideration for items other than real property. Accordingly, we find that the sale price provides the best evidence of the subject's

value as of the tax lien date, and allocate the sale among the parcels based on the auditor's initial

values, reducing the total sale price assigned to these parcels by the amount attributable to the third parcel ($27,250).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 010-017811-00

TRUE VALUE

$146,480

TAXABLE VALUE

$51,270

PARCEL NUMBER 010-007478

TRUE VALUE

$147,290

TAXABLE VALUE

$51,550

OHIO BOARD OF TAX APPEALS

BRANKO YELICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-782
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BRANKO YELICH
20224 GLEN RUSS
EUCLID, OH 44117

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellant's notice of appeal.

On June 19, 2019, the appellant filed a notice of appeal with this board. Appellant did not include a copy of a BOR decision. The statutory transcript certified to this board indicates there is no record of a decision issued by the BOR for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an

appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

OSAMA & SAHAR MAKAR, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-775 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OSAMA & SAHAR MAKAR
Represented by:
OSAMA MAKAR
OWNER
8424 WYATT RD
BROADVIEW HTS, OH 44147

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme

Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ELLEN J. PATTON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-764
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - ELLEN J. PATTON
Represented by:
ELLEN PATTON
3515 BURCH AVENUE
CINCINNATI, OH 45208

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires

that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR thirty-four days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PROSPERITY HOLDING GROUP, LLC, (et. al.), Appellant(s), vs. MERCER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-559 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PROSPERITY HOLDING GROUP, LLC
Represented by:
LUKE SMITH
19702 OHIO CITY VENEDOCIA RD.
VENEDOCIA, OH 45894

For the Appellee(s) - MERCER COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to affirm the Mercer County Board of Revision's ("BOR") decision dismissing the underlying complaint for lack of jurisdiction, and appellant's response thereto.

Appellant filed a complaint against the assessment of real property, i.e., DTE Form 2, for tax year 2019 with the BOR, indicating it was requesting that a special assessment be removed from its tax bill. The county appellees explain in their motion that the assessment was imposed by Union Township for removal of an obstruction from a public right-of-way. Motion at 1. The county appellees argue that the relief sought is not within the BOR's jurisdiction, and therefore, its dismissal of the complaint was proper.

Pursuant to R.C. 5715.19(A)(1), a complaint filed with a county board of revision may challenge any of the following:

(a) Any classification made under section 5713.041 of the Revised Code;

(b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;

(c) Any recoupment charge levied under section 5713.35 of the Revised Code;

(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(e) The determination of the total valuation of any parcel that appears on the agricultural tax list, except parcels assessed by the tax commissioner pursuant to R.C. 5727.06 of the Revised Code;

(f) Any determination made under division (A) of section 319.302 of the Revised Code.

Appellant sought to challenge the imposition of a special assessment pursuant to R.C. 5547.03. Such assessment is not properly challenged through a complaint filed with a board of revision, whose authority is limited to those power conferred upon it by the General Assembly. *Steward v. Evatt*, 144 Ohio St. 547 (1944), paragraph one of the syllabus. See also *Megaland GP LLC v. Franklin Cty. Bd. of Revision* (Oct. 3, 2017), BTA Nos. 2017-933, 934, unreported. Compare R.C. 5540.031(F)(4) (providing for challenging an assessment by a transportation improvement

district by a complaint filed with a county board of revision); R.C. 319.20 (providing for challenging the apportionment of an assessment upon partial conveyance of property by a complaint filed with a county board of revision); *State ex rel. Rolling Hills Local School Dist. Bd. of Edn. v. Brown Cty. Aud.*, 63 Ohio St.3d 520 (1992) (assessment of real property includes assigning parcels to taxing districts and recording them accordingly).

It is clear from appellant's statement attached to the DTE Form 2 that it challenges the township's actions in imposing the assessment. Such action is not properly reviewed by the BOR. We therefore find the BOR's decision to dismiss the complaint for lack of jurisdiction was proper. The motion to affirm is therefore well taken, and the decision of the Mercer County Board of Revision is hereby affirmed.

OHIO BOARD OF TAX APPEALS

JOHN PEROTTI, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-557
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOHN PEROTTI
BOX 37635, SUITE 10287 C/O ABC AGENTS
PHILADELPHIA, PA 19101

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

John Perotti appeals from a decision of the Cuyahoga County Board of Revision ("BOR") dismissing Perotti's 2018 valuation complaint as untimely. The BOR has filed a motion to dismiss, and Perotti has filed a memorandum in opposition. Because we find Perotti's complaint was untimely, we affirm the BOR's decision.

Any party wishing to challenge a 2018 real property tax valuation had to file a complaint on or before March 31, 2019. See R.C. 5715.19. The Ohio Supreme Court has long held that deadline is mandatory and jurisdictional. *Stanjim Co. v. Mahoning Cty. Bd. of Revision*, 38 Ohio St.2d 233 (1974). The complaint must be dismissed if it filed after that date. *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285. Generally, a complaint is "filed" when the complainant delivers the complaint

to a BOR and the BOR takes possession of it. See *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 94 Ohio St.3d 170, 2002-Ohio-4032, ¶ 10. An exception applies when a party mails the complaint to the BOR. In that instance, the complaint is "filed" on the date it is postmarked by the USPS. R.C. 5715.19(A)(1). A "private meter postmark is not a valid postmark for purposes of establishing the filing date."

Perotti was incarcerated at the Southern Ohio Correctional Facility in Lucasville during all times relevant. He owns the subject property, which is located in Cuyahoga County. Perotti signed the valuation complaint on March 20, 2019. While the record is somewhat unclear, it appears Perotti presented the enveloped complaint to the prison mailroom on either March 25 or March 29, 2019. However, it seems the mailroom did not process the enveloped complaint until April 3, 2019. The envelope bears a prison time stamp for April 3, 2019, but there is no USPS time stamp. Regardless, the BOR received the complaint on April 8, 2019. BOR staff engaged in a series of phone and written conversations with Perotti regarding the timeliness of the complaint. The BOR ultimately dismissed the complaint as untimely, and Perotti appealed to this board.

The record is clear Perotti's complaint was untimely because it was not delivered to and accepted by the BOR until after the March 31, 2019, deadline. The record is also clear the envelope containing the complaint had no USPS postmark showing the complaint was mailed on or before March 31, 2019. Perotti argues this board should apply the "prison mailbox rule," which would require us to find Perotti "filed" the complaint when he presented it to the prison mailroom, i.e., either March 25 or March 29, 2019. However, we agree with the BOR that the prison mailbox rule does not apply to the deadline established in R.C. 5715.19. The prison mailbox rule stems from the United States Supreme Court decision in *Houston v. Lack*, 487

U.S. 266 (1986). In *Houston*, an inmate placed an appeal in the prison mail system before an appeal deadline expired, but the court did not receive the appeal until after the deadline. The Court

held placing the appeal in the prison mail system constituted filing for purposes of the federal appeals statute and the Federal Rules of Appellate Procedure. However, the Ohio Supreme Court has expressly rejected the prison mailbox rule for purposes of Ohio law. *State ex rel. Tyler v. Alexander*, 52 Ohio St.3d 84 (1990); *Stewart v. Gillie*, 10th Dist. Franklin No. 16AP-859, 2017-Ohio-4088. Accordingly, we find the federal prison mailbox rule inapplicable. R.C. 5715.19 requires a complaint to be timely filed. That means anticipating processing delays. See *Delay v. Cuyahoga Cty. Bd. of Revision* (June 21, 2017), BTA No. 2016-889, unreported.

For these reasons, this board finds the complaint was untimely and properly dismissed by the BOR. We lack jurisdiction to consider Perotti's constitutional arguments and leave those to be addressed by a court that can consider them. *Wright State University Bd. of Trustees v.McClain* (July 12, 2019), BTA No. 2017-1745, unreported. This appeal is dismissed.

OHIO BOARD OF TAX APPEALS

CALVIN E FINK JR, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-532 (REAL PROPERTY TAX) ORDER

APPEARANCES:

For the Appellant(s) - CALVIN E FINK JR
6452 ASHLEY OAKS CT
WEST CHESTER, OH 45069

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Although having been duly notified of the hearing scheduled to proceed in this matter on 7/31/2019, the appellant(s) failed to appear at hearing and also failed to provide the required advance written notice of intent to waive hearing. See Ohio Adm. Code 5717-1-16(F); scheduling notice. Accordingly, acting pursuant to Ohio Adm. Code 5717-1-19, the present matter is hereby dismissed due to a failure to prosecute with the requisite diligence. Compare *Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St.3d 340, 2015-Ohio-2571.

OHIO BOARD OF TAX APPEALS

KALPESH CHAUDHARI, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-509
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LUCAS COUNTY BOARD OF REVISION, (et. al.),	)	
	)	ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - KALPESH CHAUDHARI
OWNER
UNIQUE PERSONAL COMMUNICATIONS, LLC
6430 WHEATSTONE
MAUMEE, OH 43537

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
ELAINE B. SZUCH
ASSISTANT PROSECUTING ATTORNEY
LUCAS COUNTY
711 ADAMS, SUITE 250
TOLEDO, OH 43604

ANTHONY WAYNE LOCAL SCHOOLS
Represented by:
MICHAEL W. BRAGG
ATTORNEY
SPENGLER NATHANSON P.L.L.
900 ADAMS STREET
TOLEDO, OH 43604

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Although having been duly notified of the hearing scheduled to proceed in this matter on 7/31/2019, the appellant(s) failed to appear at hearing and also failed to provide the required advance written notice of intent to waive hearing. See Ohio Adm. Code 5717-1-16(F); scheduling notice. Accordingly, acting pursuant to Ohio Adm. Code 5717-1-19, the present matter is hereby dismissed due to a failure to prosecute with the requisite diligence. Compare

OHIO BOARD OF TAX APPEALS

ROSS-SMITH, JOANNE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-284
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ROSS-SMITH, JOANNE
Represented by:
JOANNE ROSS-SMITH
OWNER
3757 PRINCETON BLVD
S. EUCLID, OH 44121

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon a notice of appeal filed by the appellant taxpayer on February 21, 2019. In response to this board's request that the Cuyahoga County Board of Revision ("BOR") file a statutory transcript pursuant to R.C. 5717.01, the county has provided such documents and indicates this appeal is duplicative of another appeal filed with this board and docketed as BTA No. 2019-276. That appeal was dismissed for lack of jurisdiction on May 17, 2019.

A review of the notices of appeal filed in both appeals confirms the BOR's assertion that the appeals are duplicative. In addition, the statutory transcript also confirms that both appeals were filed prior to the BOR rendering a decision on appellant's application for remission of a

late payment penalty for the first half of 2018. This appeal, like BTA No. 2019-276, was therefore filed prematurely. Finally, it appears that, following the appeals to this board, the BOR has granted appellant's request for remission, in a decision dated May 9, 2019. There appears, therefore, to be no justiciable issue for this board to review.

For all of the foregoing reasons, we find we lack jurisdiction over this matter and hereby dismiss the appeal.

OHIO BOARD OF TAX APPEALS

STEVE & SHELLY BAIRD, (et. al.), Appellant(s), vs. UNION COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-242 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEVE & SHELLY BAIRD
Represented by:
STEVE BAIRD
OWNER
9496 TARTAN RIDGE CT
DUBLIN, OH 43017

For the Appellee(s) - UNION COUNTY BOARD OF REVISION
Represented by:
RICK RODGER
ASSISTANT PROSECUTING ATTORNEY
UNION COUNTY
221 WEST 5TH STREET, SUITE 333
MARYSVILLE, OH 43040

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon a notice of appeal filed by Steve and Shelly Baird concerning a real property tax late payment penalty for the second half of 2018. Appellants filed with this board a copy of the application for remission they filed with the Union County treasurer. Although the decision section of the application indicates the Union County Auditor denied the application, there is no indication that, as of the date of filing with this board, the Union County Board of Revision had yet rendered a decision on the application. As such, this board ordered appellants to show cause why this matter should not be dismissed as premature. Appellants did not respond.

Review of applications for remission of real property tax late payment penalties is governed by R.C. 5715.39. After the application is filed with the county treasurer, the county auditor must remit penalties under certain circumstances. If the auditor does not find remission is required, the auditor must present the application to the county board of revision for further review and decision. A decision of the county board of revision may then be appealed to this board. R.C. 5717.01.

The Board of Tax Appeals is a creature of statute. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988). As a creature of statute, we are limited to those powers vested in this board by statute. *Steward v. Evatt*, 143 Ohio St. 547 (1944). Under R.C. 5717.01 and R.C. 5703.02, this board has authority over decisions of county boards of revision. Prior to the time of decision by a county board of revision, any appeal to this board is premature. Such appears to be the case in this matter, as no party has indicated that the Union County Board of Revision rendered a decision on appellants' application prior to the filing of this appeal.

Based upon the foregoing, we conclude that this matter is premature. Because we lack jurisdiction over the appeal, it is hereby dismissed.

OHIO BOARD OF TAX APPEALS

AL GAMMARINO, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1687, 2018-1688 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AL GAMMARINO
OWNER
3020 GLENFARM COURT
CINCINNATI, OH 45236

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Al Gammarino appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 609-0013-0022-00 and 609-0013-0144-00, for tax year 2017. We proceed to consider these matters based upon the notices of appeal, statutory transcripts certified pursuant to R.C. 5717.01, record of this board's hearing, any motions and associated responses, and any written argument.

[2] For tax year 2017, the county auditor assessed parcel 609-0013-0022-00 at $84,300 and parcel 609-0013-0144-00 at $82,180. Gammarino filed complaints with the BOR, which requested that parcel 609-0013-0022-00 be revalued at $51,000 and 609-0013-0144-00 be revalued at $33,000. The BOR held separate hearings on the complaints. At the hearing for

parcel 609-0013-0022-00, Al Gammarino appeared to submit argument and/or evidence in support of the complaint. As the hearing commenced, there was some discussion about the ownership of the parcel (owned by Cathy Gammarino TR) and his ability to represent the interests of the ownership, i.e., Cathy Gammarino was his wife. He clarified that he filed the complaint as the party affected, i.e., the person who pays the property taxes, and as an owner of real property in the county. He testified as to the condition of the parcel and argued that the most recent sale of the parcel, for $51,000 in July 2013, was the best evidence of value, consistent with the Supreme Court's decision in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. He also argued that the county auditor failed to satisfy his statutory duty in valuing the parcel, i.e., to view, to inspect, and to rely upon all available evidence, as required by R.C. 5713.01. He argued that the parcel's valuation had increased too much over its prior sexennial value. To support his testimony, he presented a packet of documents, which included photographs of the parcel, sale documents memorializing the $51,000 transfer in July 2013 and comparable sales data. The BOR members voted to reduce the value of parcel 609-0013-0022-00 to $75,870 based upon a change in condition, from "good" to "fair," after listening to the testimony and reviewing the photographs of the parcel.

[3] At the hearing for parcel 609-0013-0144-00, Gammarino advanced substantially similar arguments. He also argued that the parcel's $33,3000 sale price in October 2011 was the best indication of its value, as the county auditor had accepted the sale as the parcel's value for the prior sexennial period. Thaddeus "Tad" Kowal, an employee from the county auditor's office, appeared to testify consistent with a written evaluation and report on the property owner's complaint and evidence. He testified that comparable sales data indicated that the parcel's initial value was supported by the market. The BOR members voted to reduce the value of parcel 609-0013-0144-00 to $69,900 based upon a change in condition, from "good" to "poor," after listening to the

testimony and reviewing the photographs of the parcel.

[4] The BOR subsequently issued written decisions consistent with their oral votes and these appeals ensued.

[5] While these matters were pending for hearing, Gammarino filed motions to compel the county appellees to provide the color photographs that he submitted at the BOR hearings. The county auditor filed responses, to assert that the BOR satisfied its obligations under R.C. 5717.01 to provide a complete record of the BOR proceedings and that Gammarino could submit the color photographs again at this board's hearing.

[6] Days prior to the scheduled merit hearing before this board, the county auditor submitted written argument to assert that Gammarino had not satisfied his duty to provide competent, credible, and probative evidence of value, that this board lacked jurisdiction to consider whether the county auditor violated the statutory duties required by R.C. 5713.01, and that the BOR decisions were unsupported and, therefore, the subject properties' initially assessed values should be reinstated. On the hearing day, Gammarino submitted written argument to assert that he had provided sufficient evidence to demonstrate that the subject properties had been overvalued and that their prior valuations should be reinstated.

[7] This board held a consolidated hearing on these appeals, at which time only Gammarino appeared to supplement the record with additional argument and/or evidence. As the hearing commenced, he was provided an opportunity to argue in support of the pending motions to compel. Although he conceded that the BOR had provided black and white copies of the photographs that he submitted at the BOR hearings, he argued that such copies did notaccurately de pict the condition of the subject properties as the color photographs that he submitted at the BOR hearings would have. He expanded upon his prior arguments and testimony and asserted that his experience as a realtor and real-estate broker should give more weight to his testimony. He also provided

details about the underlying sales upon which he relied in these matters, i.e., the $51,000 transfer of parcel 609-0013-0022-00 in July 2013 and $33,300 transfer of parcel 609-0013-0144-00 in October 2011. He argued that he should prevail in these matters because the county appellees failed to attend the hearing or to otherwise produce evidence in support of the BOR decisions. Gammarino submitted additional photographs, as well as certified copies of the subject properties' property reports, in addition to other documents.

[8] After the hearing, the county auditor filed a responsive brief, which addressed the issues raised in Gammarino's written argument but also asserted that Gammarino had engaged in the unauthorized practice of law. As a consequence, the county auditor requested that this board strike Gammarinio's oral and written attempts to interpret statutory and case law. In response, Gammarino requested that the county auditor's reply brief be stricken.

[9] Before we consider the merits of these appeals, we must first resolve several pending issues. First, we deny Gammarino's motions for expedited orders to require the BOR to provide color copies of the photographs submitted at the BOR hearings. Gammarino had an opportunity to resubmit the photographs at the hearing before this board and, as result, we cannot conclude that he was prejudiced by the black and white copies of the photographs. It should be noted that the case to which Gammarino cited, *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio1611, is not relevant given that that case involved the BOR's *complete* failure to transmit all the evidence that it considered in its proceedings, which is not at issue here. Thus, Gammarino's motions for expedited order are denied. Furthermore, as will be discussed more fully below, we do not find the photographs, whether in color or in black and white, to be competent, credible, and probative evidence that the subject properties' values should be reduced consistent with Gammarino's requests.

[10] Second, we deny Gammarino's request to strike the county auditor's reply to his

written argument. Written argument is typically filed for the benefit of the board, and, generally, will not be excluded absent a demonstration that consideration of such brief would either prejudice the other party or adversely impact the board's ability to consider the appeal. In this instance, no such assertions have been made, and, therefore, Gammarino's motions are denied. Ohio Adm. Code 5717-1-17.

[11] Third, we reject the county auditor's assertion that Gammarino engaged in the unauthorized practice of law and request to strike portions of the oral and written record. The record demonstrates that the Gammarino filed and acted in this matter in his own capacity, as an owner of real property in Hamilton County.

[12] Fourth, to the extent that Gammarino moved for summary judgment, because the county appellees did not attend this board's hearing or otherwise submit evidence in support of the BOR's decisions, we deny such request. *Brown v. Levin*, 119 Ohio St.3d 335, 2008-Ohio-4081, at ¶11, ("the BTA has no power analogous to that of a court in a civil action to grant summary judgment ***.").

[13] We proceed to consider the merits of these appeals.

[14] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject properties' values. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[15] The record is clear that Gammarino relied upon the $51,000 transfer of parcel 609-

0013-0022-00 in July 2013 and $33,300 transfer of parcel 609-0013-0144-00 in October 2011 as the bases for these proceedings and the Supreme Court's decision in *Akron City*, supra. In that case, the court held "that a sale that occurred more than 24 months before the lien date and that is reflected in the property record maintained by the county auditor or fiscal officer should not be presumed to be recent when a different value has been determined for that lien date as part of the six-year reappraisal. Instead, the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." Id. at ¶26. Here, the subject sales are presumed not to be recent because they occurred more than 24 months before the sexennial reappraisal for tax lien date January 1, 2017. It is equally clear that Gammarino believed that he carried his burden to provide evidence demonstrating no change in market conditions or to the subject properties between the sale and tax lien dates or no change. We disagree. Though Gammarino provided comparable sales data recent to the tax lien date, he failed to provide evidence of market conditions at the time of the subject sales, and intervening years between the sale and tax lien dates, or a paired sales analysis, such that this board could conclude that market conditions were similar or remained stable. See *Financial Wealth Assoc. LLC v. Cuyahoga Cty. Bd. of Revision* (Oct. 19, 2017), BTA No. 2016-2151, unreported at 3 ("The property owner could have provided an appraisal report with a paired sales analysis to demonstrate *** market conditions. See e.g., *Bd. of Edn. of the Columbus City Schools v Franklin Cty. Bd. of Revision* (May 1, 2014), BTA No. 2011-2227, unreported, *aff'd* 2016-Ohio-757."). We acknowledge that Gammarino submitted photographs of the subject properties, purportedly to support his position that the condition of the subject properties had not changed. The record is, however, devoid of any indication when the photographs were taken and there are no photographs comparing/contrasting the subject properties at the time of the subject sales and on the tax lien date. As such, we cannot confirm that the subject

properties did not experience any condition changes between the sales and tax lien dates.

[16] We also acknowledge Gammarino's testimony that he is familiar with the subject properties and familiar with the real-estate market in the area because of his experience as a realtor and real-estate broker. It should be noted that Gammarino is not an appraiser, an expert qualified to opine real property value. We have previously noted that "[r]eal estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience. *** As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." See The Appraisal of Real Estate (13th Ed. 2008), at 8-9. As it relates to parcel 609-0013-0144-00, the parcel owned by Al Gammarinio, TR, we note that an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. ofRevision* (Nov. 30, 2018), BTA No. 2018-414, unreported.

[17] Gammarino also argued that the subject properties' conditions necessitate reductions to their values. Though he conceded that he failed to provide evidence to quantify the specific diminution in value that resulted from the defects, he asserted that the defects must be considered when valuing the subject properties. See, *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, at ¶7 ("There was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation." Likewise, this board has repeatedly rejected the argument that defects, unquantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. For example, even if we accepted his argument that the cracked foundation of parcel 609-0013-0022-00 required a

reduction to its value, the record is devoid of any evidence to support a reduction *to a specific value* including the $51,000 sale price of July 2013.

[18] We must also reject Gammarino's argument that the subject properties' values for the prior triennial period should carry forward into the year of the sexennial reappraisal. As previously noted, the county auditor was under a statutory duty to reassess real property values, in light of the existing market conditions, for tax year 2017. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. In carrying out such duty, the county auditor increased the subject properties values. The Supreme Court has previously held that each tax year stands alone, and the fact that value may have been modified in another year is not competent and probative evidence that a different year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997).

[19] Gammarino argued the subject properties' values should be reduced because the mass appraisal system, overseen by the county auditor, does not satisfy the requirements of R.C.5713.01, specifically to individually inspect and to view the real property. The Supreme Court considered and rejected a very similar argument in *Jakobovitch v. Cuyahoga Cty. Bd. ofRevision*, 152 Ohio St.3d 187, 2017-Ohio-8818. There the court reasoned:

> Quite simply, then, nothing impugns the fiscal officer's actions, so we presume that the fiscal officer's unexplained adjustment was made in good faith and arose from the exercise of good judgment. *See Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588 ***, ¶ 24. Moreover, we
>
> find it immaterial that the fiscal officer's upward adjustment lacks a supporting rationale because, as the BTA correctly found, Jakobovitch failed to furnish competent and probative evidence of her proposed value. Under the case law, the fiscal officer does not bear the burden to prove the accuracy of his or her valuation until the proponent of a different value presents competent and probative evidence to rebut that valuation. *Colonial Village*, 123 Ohio St.3d 268, 2009-Ohio-4975, ***, at ¶ 23, 30-31.

(Parallel citations omitted.) Id. at ¶21. Here, we must conclude that Gammarino has not presented competent, credible, and probative evidence of the subject properties' values and, therefore, the

county auditor need not prove the accuracy of the subject properties' initially assessed values.

[20] Now that we have concluded that Gammarino failed to submit sufficient evidence to demonstrate that the subject properties' values should be reduced consistent with his requests, we now turn to the BOR's decisions. As noted above, the BOR issued decisions that reduced the value of parcel 609-0013-0022-00 to $75,870 based upon a change in condition, from "good" to "fair," and the value of parcel 609-0013-0144-00 to $69,900 based upon a change incondition, from "good" to "poor." Unfortunately, the record does not support the BOR's decisions. Though we acknowledge the downward changes in the condition of the subject properties, there is no evidence to demonstrate how the BOR arrived at their specific value conclusions. For example, though parcel 609-0013-0022-00 was reduced from $84,300 to $75,870, the record is devoid of any evidence demonstrating that a change in condition from "good" to "fair" equated to a $8,430 reduction. As a result, we are unable to replicate the BOR's analysis and, therefore, cannot affirm the BOR decisions. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028.

[21] In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude Gammarino failed to provide competent and probative evidence of the subject properties' values before the BOR and before this board. Furthermore, because we are unable to replicate the BOR's decisions, or to fully determine how the BOR arrived at its values, we are forced to conclude that the BOR's decisions are unsupported. We are constrained to reinstate the subject properties' initially assessed values. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶18 ("We have held that the BTA acts appropriately in departing from the

BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 35. Here, the BTA assigned a value that *** could be achieved only through artifice.") (Parallel citations omitted.)

[22] It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER 609-0013-0022-00

TRUE VALUE: $84,300

TAXABLE VALUE: $29,510 PARCEL

NUMBER 609-0013-0144-00 TRUE

VALUE: $82,180

TAXABLE VALUE: $28,760

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1262, 2018-1265 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION AND HILLIARD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

1440 THURELL ROAD, LLC AND 5066 MENGEL LANE LLC
Represented by:
DONALD HOWARD
506 RILEY AVE
WORTHINGTON, OH 43085

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1[The appellant boards of education ("BOE") appeal decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-129353-00 and 050-001886-00, for tax year 2017. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subjects are residential properties, and each is improved with a single-family home. The auditor initially assessed the properties' total true values at $117,400 and $143,200, respectively. The appellee property owners filed complaints with the BOR seeking reductions in value to $60,150 and $86,490 based on 2015 sales of each property. The BOE filed countercomplaints in support of the auditor's values. At the BOR hearing, Donald Howard, the sole member of both the property owners, appeared in support of the requested reductions. Howard testified that he purchased the properties in 2015 after they were listed for sale by realtors on the open market and asserted that the sale prices should be relied upon to establish the values of the subject properties. The BOE argued that the sales were not reliable evidence of value because the seller in the transactions was the Secretary of Housing and Urban Development ("HUD"). The BOE cross-examined Howard but did not present independent evidence of value. In response, Howard asserted that HUD sales may be reliable evidence of value and that these sales took place within the period of time that benefits from a presumption of recency. The BOR issued decisions reducing the initially assessed valuations to $60,200 and$ 86,500, respectively, indicating that it considered Howard's testimony, the documents submitted, and additional information it obtained and used to supplement the record, such as listing information for the properties.

[3] The BOE appealed these decisions to this board. This board convened a hearing, at which the BOE argued that the BOR's reductions were unlawful because the sales at issue were presumed to be invalid HUD sales, maintaining that the auditor's values should be reinstated. Howard again appeared in support of the reduced values, testifying about the sales and arguing that they are different from sheriff's sales because the properties are exposed to the open market. Howard explained that HUD properties are generally listed for at least two weeks

during a period in which only an owner-occupant can make offers. Howard asserted that for both of the sales at issue in this case, he made a "highest and best offer" after multiple bidders made offers. Howard further testified that only cosmetic repairs were necessary after he purchased the subject properties, though both were vacant at the time of the sales.

[4] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[5] In the present matter, it is undisputed that Howard purchased the subject properties from HUD before later transferring them to limited liability companies. Howard purchased parcel

number 010-129353-00 on March 30, 2015 for $60,150 and parcel number 050-001886-00 on September 23, 2015 for $86,490. The BOE argues that a HUD sale is not a valid sale for purposes of establishing the value of a property, citing to *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907 ("*Fenco*"). In *Fenco*, the court held that a HUD sale constitutes a foreclosure sale that is presumptively not arm's-length. Since this decision, however, the court has set forth additional direction regarding the utility of auctions and forced sales. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 ("*TaDa*"). In *TaDa*, the Supreme Court held that R.C. 5713.04, which provides that "[t]he price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value," is not an absolute bar. The court held that, instead, R.C. 5713.04 is the codification of a rebuttable presumption that forced sales and auctions are not at arm's length, which could be rebutted by the party relying upon the sale. Id. In the present appeal, we find that the appellee property owners have provided sufficient evidence to rebut this presumption and show that the sales were arm's-length transactions.

[6] Howard testified that a realtor made him aware that the properties were listed on the market and available to purchase. Howard further testified that after the time period for which only owner-occupants could make offers, he placed his bid and another after the seller's agent requested a highest and best offer. The BOR also supplemented the record with the subjects' listings, which confirmed that the properties were on the market for 15 and 31 days, respectively, before the parties entered into contracts. Accordingly, we find that the sales were arm's-length transactions and see no reason that the Howard's purchases should not serve to establish the value of the subject property. See *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431.

[7] It is therefore the order of this board that the true and taxable values of the subject

property, as of January 1, 2017, were as follows:

PARCEL NUMBER 010-129353-00

TRUE VALUE

$60,150

TAXABLE VALUE

$21,050

PARCEL NUMBER 050-001886-00

TRUE VALUE

$86,490

TAXABLE VALUE

$30,270

OHIO BOARD OF TAX APPEALS

KETTERING CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2017-2053 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KETTERING CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

OAKS OF WEST KETTERING REAL ESTATE, LLC
Represented by:
W. CHIP HERIN III
COOLIDGE WALL CO., L.P.A.
33 WEST FIRST STREET, SUITE 200
DAYTON, OH 45402

Entered Tuesday, August 6, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number N64 03304 0007, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments.

The subject property consists of 2.393 acres of land improved with a 118-bed skilled nursing and rehabilitation facility. The auditor initially assessed the subject's total true value at $5,964,810. The appellee property owner, Oaks of West Kettering Real Estate, LLC ("Oaks"), filed a complaint with the BOR seeking a reduction in value to $4,000,000, and the BOE filed a countercomplaint in support of the auditor's value. At the BOR hearing, Oaks amended its opinion of value to $4,500,000 and presented testimony from appraiser Steven J. Weis, MAI, along with his written appraisal report. Weis determined that the value of the skilled-nursing facility as a going concern was $8,000,000 as of January 1, 2015, after performing the sales comparison ($7,670,000) and income capitalization ($8,355,000) approaches to value. Weis then allocated this value among the various components, including certificates of need ("CON"), business value, personal property, and real property, concluding that the value of the subject real property was $4,500,000 as of January 1, 2015. Weis allocated the going concern value by extracting the net operating income ("NOI") attributable to each component. First, Weiss calculated that the NOI attributed to real property was $956,028, and then he divided that number by 16.966% (13.5% capitalization rate plus 3.466% tax additur), for a value of $5,634,829 for the real property. Weis also capitalized the income for each component and added them together ($13,118,320), concluding that 42.95% of the going-concern value was attributable to the real property. Weis then applied that percentage to $8,000,000, which reflected a value of $3,440,000 for the real property. After reconciling these two approaches to the allocation, Weis concluded that the value of the subject real property was $4,500,000 as of January 1, 2015. The BOE cross-examined Weis but did not present independent evidence of value. The BOR issued a decision reducing the initially assessed valuation to $4,511,420 based on Weis's income approach. From this decision, the BOE filed the present appeal.

At the hearing before this board, the BOE presented testimony and a written report from appraiser Samuel D. Koon, MAI, who opined the value of the subject property both with the goodwill or business value of the operations included in the value attributable to the real property and with it separate. Like Weis, Koon concluded to a value of the going concern based on both the sales ($9,000,000) and income capitalization ($9,100,000) approaches to value, and then allocated that value among its various components. Koon attributed $2,065,000 to the CONs, $352,000 to furniture, fixtures and equipment ("FF&E"), and $1,040,000 to the value of the business. The remainder, Koon concluded, is the amount attributable to the subject real property. Koon opined that the value of the real property was $5,850,000 as of January 1, 2015, exclusive of any value attributable to the business.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In a case where multiple qualifying appraisals have been presented by the parties, the court has again held that the case law "makes it clear" that the BTA is statutorily required to weigh the evidence and assess credibility of both appraisals, and "has discretion to depart from any particular appraisal opinion of value and independently determine a value based on whatever evidence in the record

the BTA finds to be most probative." *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

The court has held that for purposes of valuing the real property operating as an eldercare facility, the business value must be kept separate from its real-estate value, observing that these types of facilities "charge residents for providing care and services, which is a general business activity, and charge rent, which is a real-estate activity." *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611, ¶19, citing *Dublin Senior Community Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 460 (1997). Because eldercare facilities typically sell as a going concern, where the real estate sells with the business and the personal property associated therewith, it can be difficult for appraisers to obtain the market data necessary to isolate the value attributable to the real property. Nevertheless, "[t]he separation of the income and expenses is important not only when determining net income, but also when considering a comparison of the sale prices of comparable facilities." *Dublin Senior*, at 460. Thus, despite the difficulty involved in doing so,

accurate separation of the value between business and real estate activities is required based on the information available. There are several basic approaches utilized by appraisers to separate the tangible and intangible assets inherent in the operation of certain types of properties from the real estate, including the cost approach, management fee approach, market participant survey approach, and parsing income method. Appraisal Institute, *The Appraisal of Real Estate* 710-714 (14th Ed.2013). Each of these methodologies has strengths and weaknesses, and all depend on the reliability of the underlying data.

As we review the evidence, we find that Koon's appraisal is reasonable, well-supported, and provides the most reliable indication of the value of the subject real property, and that

Weis's report provides additional support for Koon's conclusion. Initially, both appraisers utilized similar numbers in their income-capitalization analyses, though Weis understated his conclusion of value by overstating the tax additur. Koon concluded to a NOI of $1,459,171 and applied a capitalization rate of 13.5% plus a 2.18% additur, which took into account his determination that only 62.9% of the value of the going concern was attributable to real property. This resulted in an indicated value of $9,300,000 (rounded) for the going concern. Weis concluded to a similar NOI of $1,417,323 and applied a 13.5% capitalization rate but applied a full tax additur, which reduced the value of the going concern as though it were all subject to taxation. If we apply Koon's tax additur, the resulting value would be $9,039,050, but if we adjust Weis's tax additur from 3.466% to 1.489% (because he determined that only 42.95% of the going concern was attributable to real property), the capitalized value is

$9,455,754 for the going concern. Thus, we find that Weis's income approach is consistent with Koon's conclusion.

Next, we find that the data Koon relied upon for his sales comparison approach was more reliable as evidence of value for the subject property than the data utilized by Weis in his report, because his comparable sales better reflected the subject's market. While Weis looked for sales nationally, Koon's sales were located within Ohio. While certain properties may require a wider search to find sales of properties most comparable to the subject, we find that it was not necessary in this case and that Koon's sales of properties within the state provide better insight into the value of the subject property. See *Rite Aid of Ohio, Inc. v. Washington Cty. Bd.*

of Revision, 146 Ohio St.3d 173, 2016-Ohio-371. Additionally, because this approach was utilized to establish a going concern and was later allocated, we find that Koon appropriately adjusted those sales to take into account not only the physical differences among the properties

but also the economic differences. Thus, we find that Koon's sales comparison analysis provides a reliable indication of the value of the going concern while Weis's sales comparison approach should be given little or no weight in our conclusion of value.

Finally, we find that Koon's allocation of the overall going concern is better supported, and that Weis's allocation also supports Koon's conclusion of value. In this case, both appraisers first valued the going concern and then attempted to allocate the total value of the going concern to reach the value of the real property. Weis did so based on the parsing income method and Koon utilized the management fee approach, both of which are acceptable methodologies and can properly separate the various components of the going concern. Koon utilized his knowledge of the market to establish a 2% management fee to value the business, sales of CONs to calculate their value, and cost estimates for the FF&E, then deducted each aspect from his value for the going concern. Like the data that formed the basis for Koon's value of the going concern, we find that these deductions were all well-supported and the residual is a reliable value of the real property. Weis also looked to market data for his approach and allocated the total NOI proportionately among its component parts. We find that this portion of his allocation is supported and appropriate, though his capitalization rate may be too high because he used the same rate for the going-concern, which incorporates the risk of ownership for not only the real estate, but also the business, which requires a higher rate of return. We disagree with Weis's further reduction of this number to account for the difference between the value of the components based on their rates of return and his conclusion for the value of the overall going concern. We find that this final step is unnecessary and deflated his

value conclusion. At $5,634,829, Weis's direct capitalization of the income attributable to the real property, however, provides support for Koon's conclusion that the value of the subject real property was $5,850,000.

While we acknowledge the criticisms made by Weis to some of Koon's analysis, such as his characterization of the subject's peer group, CON valuation analysis, and FF&E value, we find that Koon has provided adequate support for his conclusions and Weis's criticisms are without merit. We have often acknowledged that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. In this case, we find that Koon's overall methodologies were well-supported and provide a reliable evidence of the value of the subject property on the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$5,850,000

TAXABLE VALUE

$2,047,500

OHIO BOARD OF TAX APPEALS

SHERRIDON, ANNE G., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-398
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - SHERRIDON, ANNE G.
Represented by:
ANNE SHERRIDON
3018 W.12TH ST.
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is before the Board of Tax Appeals upon the filing of a notice of appeal by the appellant property owner, which challenged the value of the subject property, parcel 008-08-011, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and statutory transcript certified pursuant to R.C. 5717.01.

Before we address the merits of this appeal, we must first ensure that we have jurisdiction to do so. A review of the notice of appeal indicates that the board of revision ("BOR") mailed its decision to the appellant on March 1, 2019. However, a review of the statutory transcript indicates that such assertion may not be accurate. The statutory transcript includes a statement, which noted that neither an application for remission of late payment penalty of real property tax nor a

complaint that challenged real property value had been filed with any of the appropriate county agencies, including the BOR. The statement goes on to note that, as a result, there were no documents to provide and no decision of the BOR from which the appellant could appeal.

This case proceeded to a small claims telephone hearing as previously scheduled. During the telephone hearing, the possible jurisdictional issue was raised with the property owner. She was unable to confirm that she had followed all the appropriate steps to challenge the subject property's value. Specifically, she was unable to establish that the she had filed a complaint against value with the BOR and that the BOR had issued a decision on such a complaint.

R.C. 5703.02 grants this board the authority to hear and determine appeals from decisions of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The property owner has presented no indication that a decision was issued by the BOR from which this appeal could be taken. Accordingly, she has failed to invoke this board's jurisdiction and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

BLUES CREEK GOLF LLC, (et. al.), Appellant(s), vs. UNION COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1781 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BLUES CREEK GOLF LLC
Represented by:
LESLIE CHRISTMAN
MEMBER
20640 STATE ROUTE 4
MARYSVILLE, OH 43040

For the Appellee(s) - UNION COUNTY BOARD OF REVISION
Represented by:
RICK RODGER
ASSISTANT PROSECUTING ATTORNEY
UNION COUNTY
221 WEST 5TH STREET, SUITE 333
MARYSVILLE, OH 43040

MARYSVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Thursday, August 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Blues Creek Golf, LLC ("Blues Creek"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 19-0018027.0000 and 19-0018026.0000, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C.

5717.01, and the hearing before this board. The appellee board of education ("BOE")

filed a motion for sanctions based on Blues Creek's purported failure to respond to requests for discovery. Although not formally withdrawn, the BOE indicated that the motion was likely filed in error due to an oversight, as it had received responsive information. As such, we hereby deny the motion for sanctions as moot.

The subject property consists of two parcels totaling 65.52 acres of land that is part of the Blues Creek Golf Course, which includes three other parcels that are located in a different school district and are not the subject of this appeal. The subject parcels are improved with a single-family home, some small maintenance buildings, and a clubhouse, and include holes 1-6, 10, and portions of holes 7 and 9. The auditor initially assessed the subject's total true value at $334,290. Blues Creek filed a complaint with the BOR seeking a reduction in value to $175,000, and the BOE filed a countercomplaint in support of the auditor's values. The BOR convened a hearing, at which Blues Creek's owner, Leslie Christman, appeared to describe the property and testify in support of the requested reduction. Christman asserted that because the Blues Creek flows through the course, it has a bad reputation for flooding and frequently closes due to floods. Christman described difficulty obtaining financing and claimed the course operated at a loss, largely due to expenses. Christman also maintained that the auction sale of another golf course supported the requested reduction, though he was unsure as to the price at which it sold. The BOE argued that Blues Creek failed to present competent and probative evidence of value and, therefore, failed to meet its burden. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. At this board's hearing, Christman appeared and testified regarding flooding issues, low net operating income,

and a high rate of golf-course-per-capita in the subject's county. Christman also provided some auditor's data for another course located in Marion County that sold in October 2018 for $850,000. The BOE again maintained that Blues Creek failed to meet its burden.

In the present appeal, Blues Creek's burden was to come forward with sufficient evidence not only to show that is the auditor's value incorrect, but also to establish that its proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, though it may be in the form of a non-expert owner's opinion of value. Id. at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

In this case, Blues Creek relied on evidence of negative conditions, specifically the flooding issues and poor financial performance. While we acknowledge the existence of these conditions, it is unclear as to the extent that they affect the subject's value. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz*, supra, at ¶17. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). Christman testified that the area of the course that is in the flood plain should be valued at $0. This board has historically rejected the argument that a property is worthless or has zero value. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 5, 2015), BTA No. 2014-1227, unreported; *Loritz v. Butler Cty. Bd. of Revision* (May 6, 2008), BTA No.

2006-K-1503, unreported. Although unique circumstances may exist that establish a parcel of land has only nominal value, those circumstances are not present in this case.

We similarly find that the business income information does not provide support for a reduction to a new value. To the extent it has been offered as an attempt to quantify the effect of the negative conditions, the record lacks information about several key components of the income approach to allow this board to utilize that data, assuming that it were even proper in this case. For instance, there has been no demonstration as to which portion of the income and expenses relate to the real property and not merely the business operations, whether such data is consistent with the local market, or support for an appropriate capitalization rate. Thus, even if we were to consider the income and expense data as reflective of the market conditions on January 1, 2017 despite a lack of anything establish this fact, we are unable to apply an appropriate capitalization rate to convert that income into value.

Finally, we find that the unadjusted sales data about other golf courses is insufficient for Blues Creek to meet its burden. See *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733, ¶7 (holding that the BTA did not abuse its discretion when it retained the BOR's value and rejected the owner's opinion of value based, in part, on "sales of other properties without providing sufficient evidence to the BTA about the circumstances of those sales or the similarities of those other properties to his own.").

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 19-0018027.000

TRUE VALUE

$121,490

TAXABLE VALUE

$42,520

PARCEL NUMBER 19-0018026.000

TRUE VALUE

$212,800

TAXABLE VALUE

$74,480

OHIO BOARD OF TAX APPEALS

COMFORT HOUSING SOLUTIONS, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-364, 2019-365 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COMFORT HOUSING SOLUTIONS
Represented by:
DONNESSA MCCALL
P.O. BOX 14869
CINCINNATI, OH 45217

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, August 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 206-0005-0198-00 and 203-0030-0006-00, for tax year 2018. We proceed to consider these matters based upon the notices of appeal, statutory transcripts certified pursuant to R.C. 5717.01, and written argument submitted by the parties.

The subject properties were initially assessed $33,110 for parcel 206-0005-0198-00 and $57,250 for parcel 203-0030-0006-00. The owner filed complaints with the BOR, which requested that the subject properties' values be reduced "[b]ased on [s]ales." Statutory Transcripts at Complaints. At the BOR hearing for parcel 206-0005-0198-00, Donessa McCall testified in support of the complaint. Kathleen Siciliano, an appraiser from the county

auditor's office, also appeared and testified about her review of the unadjusted comparable sales submitted in support of the complaint. The BOR issued a decision that retained the initially assessed value for parcel 206-0005-0198-00 and appellant appealed to this board.

At the BOR hearing for parcel 203-0030-0006-00, no one appeared in support of the complaint; however, Siciliano testified about her review of the unadjusted comparable sales submitted in support of the complaint. The BOR issued a decision that retained the initially assessed value for parcel 203-0030-0006-00 and appellant appealed to this board.

Neither the appellant nor the county appellees availed themselves of the opportunity to submit additional evidence at a hearing before this board. The county appellees submitted written argument, which asserted that the appellant failed to satisfy its evidentiary burden and, therefore, the subject properties' values should not be reduced.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

The appellant submitted printouts from the county auditor's website about the subject properties and other properties. Based upon the testimony at the BOR for parcel 206-0005-0198-00, these documents purportedly demonstrate that unadjusted comparable sales prove that the subject properties' values should be reduced. We have repeatedly held that

information of this type is an insufficient basis to determine real property value because it fails to adequately to consider and to account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. See, also *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."); *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the appellant failed to satisfy the evidentiary burden before the BOR and before this board. We conclude, therefore, that the subject properties' values shall remain as initially assessed.

It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2018:

PARCEL NUMBER 206-0005-0198-00

TRUE VALUE: $33,110

TAXABLE VALUE: $11,590

PARCEL NUMBER 203-0030-0006-00

TRUE VALUE: $57,250

TAXABLE VALUE: $20,040

OHIO BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1023 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LOWE'S HOME CENTERS, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

AVON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ABRAHAM LIEBERMAN
O'TOOLE, MCLAUGHLIN, DOOLEY & PECORA CO., LPA
5455 DETROIT ROAD
SHEFFIELD VILLAGE, OH 44054

Entered Monday, August 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon an appeal by appellant property owner Lowe's Home Centers, LLC, from a decision of the Lorain County Board of Revision ("BOR") determining the value of parcel number 04-00-016-102-066 for tax year 2016. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the auditor, the record of the hearing before this board ("H.R.") in this matter, the record of the hearing in a

separate case (BTA No. 2017-1135) as incorporated by agreement of the parties, and the parties' written arguments.

The subject property is a 139,812-square-foot retail building built in 2008 and occupied by Lowe's as a retail store on tax lien date. The Lorain County Auditor valued the property at $9,800,000 for tax year 2016. Lowe's filed a complaint against the valuation, requesting a value of $6,990,600. The Avon Local School District filed a countercomplaint seeking to maintain the auditor's initial value. Lowe's waived its appearance at the BOR hearing and provided no evidence in support of its complaint. Given that the burden is on the complainant to prove its value, counsel for the school district asked that the auditor's value be maintained. The BOR issued a decision finding no change in value warranted, and Lowe's appealed to this board. The school district has not participated on appeal.

On appeal to this board, "appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. Lowe's presented the appraisal report and testimony of Richard G. Racek, Jr., MAI, who opined a value of $5,600,000 for the subject property as of January 1, 2016. The county appellees presented the appraisal report and testimony of Thomas D. Sprout, MAI, who opined a value of $10,500,000 as of January 1, 2016. Because both appraisers also testified in an unrelated case, *Lowe's Home Ctrs., LLC v. Lorain Cty. Bd. of Revision*, BTA No. 2017-1135, the parties agreed to incorporate the appraisers' testimony from that hearing into the record of this matter.

The appraisers differ in their fundamental views of how to appraise property in its "fee simple estate, as if unencumbered ***," as required by R.C. 5713.03. Mr. Racek appraised the property under the theory that "fee simple unencumbered" requires that a property be vacant on

tax lien date, and assumes a hypothetical sale of the property without a tenant in place. Such a sale allows the buyer of a property in the hypothetical sale to acquire the complete "bundle of rights" associated with ownership of real property. Mr. Racek therefore used sales of only vacant properties in his sales comparison approach. Mr. Sprout, on the other hand, appraised the property as if it could be purchased with a lease in place at market terms. Rather than a purchaser acquiring a possessory interest in the property, the purchaser could exchange such right for the income generated from leasing the property. Mr. Sprout therefore utilized some sale comparables sold with leases in place, and adjusted those leases to account for any non-market terms. It is these divergent theories of valuation that guide the appraisers' approaches to valuing this property and the parties' arguments.

We first address Lowe's argument that R.C. 5713.03 *requires* that we accept its view that real property in Ohio must be valued as if it were vacant on tax lien date. This board confronted a similar argument in *Lowe's Home Centers LLC v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported, appeal pending, 10th Dist. No. 19AP179. We rejected the argument, citing to the Supreme Court's recent decision in *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370, where it found no error in an appraiser valuing an owner-occupied property as it were generating market rate income under a hypothetical lease. "Appraising property in this way is consistent with R.C. 5713.03's directive to determine 'the true value of the fee simple estate as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market." Id. at ¶27. Here, we likewise reject Lowe's argument that R.C. 5713.03 *requires* that the subject real property be valued as if it were vacant on tax lien date.

We turn to the merits of the appraisals. Mr. Racek placed significant weight on his sales

comparison approach. He relied on six sales and two listings. The sales occurred between September 2013 and November 2017 for unadjusted prices of $4.73/SF to $36.38/SF, and included several former Walmarts, a former BJ's Wholesale Club, a former Flower Factory, and a former Big Bear. He made adjustments for age, condition, location, land-to-building ratio, building size, increases in property values in the comparable's area (comparables 3 and 7), and the presence of a deed restriction (comparable 3). He concluded to a value of $40.00/SF for the subject property, given the subject's "location in a desirable location for retail properties," for a value conclusion of $5,600,000. H.R., Ex. A at 47. The county appellees argue that Mr. Racek's choice of vacant stores is inconsistent with his highest and best use conclusion that the subject property should be valued as if used for retail use. They note that comparable 1 remains vacant even after its sale, comparable 2 was converted to a motor vehicle dealership and is part of an enclosed mall (Midway Mall), comparables 3 and 6 were sold subject to significant deed restrictions for which Mr. Racek's adjustments were too small, comparable 4 was vacant for thirteen years prior to sale, comparables 4 and 7 are part of multi-tenant shopping centers, and comparable 8 is used by Walmart as a storage facility. County's Brief at 8-10.

Mr. Sprout placed equivalent weight on his sales comparison and income capitalization approaches. In his sales approach, Mr. Sprout relied on seven comparable sales; however, when questioned at the hearing about comparable 2, he conceded that he would not have used such sale if he had known it was the sale of a ground lease. We therefore focus on his remaining six sales, two of which sold vacant, including the sale of the former BJ's Wholesale Club upon which Mr. Racek also relied. The remaining four sales were of leased properties, and sold for

unadjusted amounts of between $51.05/SF and $104.52/SF between December 2013 and July 2017. He adjusted his sales for market conditions, size, location, physical features, and property rights. He provided the following explanation of his property rights adjustment:

> Sales 1, 3, 6, and 7 were Leased Fee sales that occurred close to when a renegotiated lease or option occurred; therefore, the lease fee interests were akin to the fee simple interest. These sales would be adjusted downward considering no vacancy or reserves were considered in the purchase price (downward adjustment). Sales 4 and 5 were all vacant at the time of purchase and may represent lower values (upward adjustment).

H.R., Ex. 1 at 37. He ultimately concluded to a value of $75/SF for the subject property, noting that comparables 2 and 7 were at the middle of the range, for a total value conclusion of $10,485,000. Lowe's argues that Mr. Sprout's property rights adjustments were inadequate, and failed to account for the creditworthiness of the tenants or the terms of the leases.

We agree with the parties that there are deficiencies in both appraisers' sales comparison approaches to value. Mr. Racek relied on significantly different properties, as the county appellees noted. There is no indication that the subject property is in a market that would support prolonged vacancy. Indeed, Mr. Racek indicated in his report that a CoStar survey of the surrounding five-mile radius indicated only a 3.1% vacancy in the first quarter of 2016, compared to a 7.6% vacancy indicated in another survey for Lorain County overall for the same time period. H.R., Ex. A at 50. We therefore find his reliance on comparable 1 inappropriate. Comparables 2, 4, and 7 are part of shopping plazas unlike the subject property which is a stand-alone property. We are therefore left with comparables 3, 5, and 6 as the most comparable. The county appellees argue Mr. Racek's adjustments to comparables 3 and 6 for

the deed restrictions in place were too low. Our review of Mr. Racek's narrative explanation of his adjustments reveals that he made *no* adjustment to comparable 6 for its deed restriction; he made only a "modest" upward adjustment to comparable 3. However, Mr. Racek's opinion that the subject could garner $40/SF in the market is far above both comparables 3, 5, and 6, which sold for $15.01/SF, $21.96/SF, and $11.96/SF, respectively. We therefore question Mr. Racek's overall conclusion based on his sales comparison approach.

As to Mr. Sprout's sales comparison approach, Lowe's faults Mr. Sprout with failing to adequately adjust his leased fee sales as is required by recent Supreme Court case law. See, e.g., *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856; *Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision*, 146 Ohio St.3d 173, 2016-Ohio-371; *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4386. We agree. Mr. Sprout merely adjusted the sales "downward considering no vacancy or reserves were considered in the purchase price." H.R., Ex. 1 at 37. He further indicated the leased fee interest was "akin" to the fee simple interest because the leases were recently renegotiated. Id. Such statement is without support in his report. In *Lowe's Home Ctrs., LLC v. Washington Cty. Bd. of Revision*, 154 Ohio St.3d 463, 2018-Ohio-1974, the Supreme Court did not find any legal error in Mr. Sprout's property adjustment, which was explained as a two-step process: "first, he determined whether the rent for each particular comparable property was above, below, or at market at the time of sale; second, he evaluated how the rent for each particular property compared to what the subject property could generate." Id. at ¶26. The court indicated that such approach could be found competent and probative and in compliance with the court's directives in prior cases to adjust leased fee sales when appraising owner-occupied property.

Here, Sprout relies on the recent renegotiation of the leases as support for their terms being at market rates, i.e., the first step of the adjustment process. However, as Mr. Racek pointed out during his testimony, the rental rate in a lease extension may have been negotiated at the time the original lease was signed, rendering it not necessarily indicative of the market on tax lien date. H.R. at 35. Mr. Sprout further explained that adjustments for the rent of his comparables was adjusted in his location and physical features adjustments. Id. at 186. We find such explanation insufficient, and Mr. Sprout's property rights adjustment process inadequate. While he appears to have appropriately adjusted each comparable to the subject, we disagree with his argument that making a further adjustment to each comparable to bring it to market rent terms would be "double dipping." Id. Such adjustment is necessary to ensure an apples-to-apples comparison of sales at market terms and comply with the Supreme Court's mandate in *Steak 'n Shake*, supra. While it may be true that the renegotiated leases are akin to

market leases, we have no data before us upon which to confirm such conclusory statement. We therefore reject reliance on Mr. Sprout's leased fee sales. His only remaining fee simple sale (excluding comparable 2 as explained above), comparable 5, sold for $38.95/SF with upward adjustments for location and condition and downward adjustment for size. It appears this single sale does not support Mr. Sprout's opinion that the subject property would sell for $75/SF.

Given the deficiencies in both appraisers' sales comparison approaches, we turn to their income approaches. In his income approach, Mr. Racek estimated the subject could generate $4.50/SF in market rent as of tax lien date, based on seven leases commenced between 2012 and 2017 for between $1/SF and $5/SF on a triple net basis. He also looked to five asking rents at rates between $2.25/SF to $6/SF. He acknowledged that all his lease comparables were smaller than the subject property but indicated the leases represent "what a piece of property in

its mid-economic life would lease for after being exposed to the open market." H.R., Ex. A at 49. He estimated a 5% vacancy rate, management and administrative expenses of 3% of effective gross income, and replacement reserves of $0.50/SF, to conclude to a net operating income of $509,859. He determined a capitalization rate of 9% to be appropriate based on big box retail store and shopping center sales. His capitalization approach resulted in a value of $5,670,000

Mr. Sprout relied solely on rents paid by Lowe's, including the terms of leases renegotiated recent to tax lien date, and two listings (one for a former Walmart in Port Clinton and one for a former Builder's Square in Akron). From these comparables, he determined the subject could generate $6/SF in market rent on tax lien date. Based on a CoStar survey, he estimated a vacancy rate of 6%, and only deducted $0.20/SF in reserves. While he estimated expenses for property taxes, insurance, and common area maintenance, he included all as reimburseable income, effectively removing them from his net operating income estimate of $752,674. He selected a capitalization rate of 7% using sales and national indicators, to reach a value conclusion of $10,535,000.

We find Mr. Racek's income approach more reliable of the value of the subject property. We agree with Lowe's that the simple fact that a lease is renegotiated temporally recent to tax lien date does not per se render it at market terms. In the absence of other market data to support such renegotiated terms, we question their character as demonstrating the market in the area. We find Mr. Racek's 5% vacancy rate conclusion supported by data within both appraisers' reports. We further find his replacement reserve appropriate and his capitalization rate supported by his report and testimony. Based upon the foregoing, we find Mr. Racek's value conclusion of $5,670,000 under his income approach to be the best evidence of value.

Because we adopt Mr. Racek's opinion of value, it appears Lowe's Equal Protection Clause and Uniformity Clause arguments are moot; however, we acknowledge the argument and make no further findings relative thereto.

Accordingly, it is the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$5,670,000

TAXABLE VALUE

$1,984,500

OHIO BOARD OF TAX APPEALS

GRANDVIEW HEIGHTS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
	)	CASE NO(S). 2018-387, 2018-388
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GRANDVIEW HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DEREK L. HAGGERTY
SCOTT SCRIVEN LLP
250 EAST BROAD STREET
SUITE 900
COLUMBUS, OH 43215-5914

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

ANGLES WILBUR L TR (ANGLES FAMILY REVOCABLE LIVING TRUST), ANGLES JANET Y TR (ANGLES FAMILY REVOCABLE LIVING TRUST)
Represented by:
FRANK J. REED
FROST BROWN TODD, LLC
ONE COLUMBUS SUITE 2300
10 WEST BROAD ST.
COLUMBUS, OH 43215

ANGLES WILBUR L TR (ANGLES FAMILY REVOCABLE LIVING TRUST), ANGLES JANET Y TR (ANGLES FAMILY REVOCABLE LIVING TRUST)
Represented by:
YAZAN ASHRAWI
FROST BROWN TODD LLC
ONE COLUMBUS - SUITE 2300
10 WEST BROAD STREET

Entered Monday, August 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 030-000626-00 ("Lincoln") and 030-000806-00 ("Mulford"), for tax year 2017. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments.

The subject properties are both two-family residential properties located in Grandview Heights. The auditor initially assessed the subjects' total true values at $347,500 and $321,800, respectively. The appellee property owner, Angles Family Revocable Living Trust, filed complaints with the BOR seeking reductions in value to $290,000 and $280,000, respectively. The BOE filed a countercomplaint in support of the auditor's values. At the BOR hearing, trustee Wilbur Angles appeared on behalf of the property owner to testify about the condition of the subject properties, the rent each receives, and the market in which they are located. Angles provided the leases for the properties and discussed their rental rates, primarily arguing that the values of the subject properties were too high in comparison to the values assessed to the neighbors. The owner also relied on testimony and written reports prepared by appraiser Mark Calvary, who opined that the values of the subject properties were $290,000 (Lincoln) and $280,000 (Mulford). Calvary relied on the sales of three two-family properties in Grandview Heights, adjusting them for physical differences. Calvary acknowledged that he did not perform an income approach though the properties are income-producing and conceded a mistake to the listed effective date on the reports, which purported to opine value effective December 14, 2017. Calvary observed that although the properties were largely similar, he valued the Lincoln

property higher because it was slightly larger. The BOE cross-examined the witnesses and submitted a list of unadjusted sales data that he asserted provides additional support for the auditor's values or even an increase. The BOR issued decisions reducing the initially assessed valuations to the amounts requested, which the BOE appealed to this board.

This board convened a hearing, at which the BOE relied on testimony and reports from Gerald F. Hinkle, II, MAI, SRA, who opined that the value of each property was $385,000 as of January 1, 2017. Hinkle relied primarily on the sales-comparison approach, utilizing the sales of five two-family homes in the Grandview Heights area, also performing an income approach utilizing a gross rent multiplier as a check on the reasonableness of the other approach. Hinkle also performed a paired sales analysis to demonstrate the change in market conditions in the subject's neighborhood over time, concluding that the area experienced great appreciation from roughly 2013 through 2017, with some appreciation from 2017 to 2018. Calvary again testified in support of his appraisals, which were edited to reflect an effective date of January 1, 2017. Calvary further clarified that although he does not have any professional designation, he is a licensed real estate appraiser. Calvary also opined that the market for two-family homes in Grandview Heights was relatively stable between 2015 and 2017. Angles again appeared to testify and criticized Hinkle's reliance on sales that took place after the tax-lien date rather than before, claiming that "anyone with a brain" knew that the price of homes had increased. Angles also criticized Hinkle's use of a multiplier and one sale in Columbus, though it was located in the Grandview area. Angles explained that he had been a licensed real estate agent since 1972, broker since 1990, and had performed some appraisal work in 1989 after taking an appraisal course. Angles claimed that he knew more about Grandview Heights than Hinkle and provided a list of sales with which he was involved in either buying or selling. Angles provided

unadjusted lists of sales of properties located within Grandview Heights School District and in Clintonville, which he claimed was a similar market to Grandview Heights. Angles again maintained that the values of the subjects were too high in comparison to the assessed values for other similar properties. Following the hearing, the parties submitted written argument in support of their respective appraisals and criticizing the opposing party's appraiser.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In a case where multiple qualifying appraisals have been presented by the parties, the court has again held that the case law "makes it clear" that the BTA is statutorily required to weigh the evidence and assess credibility of both appraisals, and "has discretion to depart from any particular appraisal opinion of value and independently determine a value based on whatever evidence in the record the BTA finds to be most probative." *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

As we review the evidence, we find that Hinkle's appraisals are reasonable, well-supported, and provide the most reliable indications of the value of the subject real properties. While we do not question Calvary's expertise or credibility, we find that Hinkle's

appraisals are better supported and accord them more weight in our analysis. First, we find that the record shows that there was significant appreciation in the market during a relatively short time period, and only Hinkle made adjustments to the sales for the changes in those market conditions. Second, although it is not necessarily a reliable indication of value in its own right, we find that Hinkle's income multiplier analysis provides a valuable check on the sales comparison approach. Third, we find that Hinkle included more support within his report and the paired-sales analysis that this board may review and utilize to weigh the reliability of his conclusions. Accordingly, we find that Hinkle's appraisals furnish the best evidence of the value of the subject properties.

Finally, we find that the balance of the evidence relied upon by the owner is not sufficient to rebut the weight we give to Hinkle's appraisals. Again, we do not question Angles' knowledge of the area, but we find that his opinions are not supported by sufficient data. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight."). This board has also typically rejected opinions from non-appraiser real estate professionals because while they may have extensive training in their field and develop some appraisal expertise, as a group, real estate sales people "typically do not consider all the factors that professional appraisers do." *Poenisch v. Franklin Cty. Bd. of Revision* (Jan. 23, 2015), BTA No. 2014-961, unreported, citing The Appraisal of Real Estate (13th Ed. 2008). Generally, unadjusted sales data does not provide a basis to adjust a property's value, as Angles himself acknowledged during this

board's hearing. See *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733, ¶7 (holding that the BTA did not abuse its discretion when it rejected the owner's opinion of value based, in part, on "sales of other properties without providing sufficient evidence to the BTA about the circumstances of those sales or the similarities of those other properties to his own."). Additionally, the values of other properties are not reliable evidence of value for the subject. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 030-000626-00

TRUE VALUE

$385,000

TAXABLE VALUE

$134,750

PARCEL NUMBER 030-000806-00

TRUE VALUE

$385,000

TAXABLE VALUE

$134,750

OHIO BOARD OF TAX APPEALS

MARK AND LUANN SCRIMENTI, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-618 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK AND LUANN SCRIMENTI
Represented by:
MARK SCRIMENTI
309 LONGSPUR ROAD
HIGHLAND HEIGHTS, OH 44143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 13, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, appellants' notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and appellants' response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. During this board's telephonic hearing, appellants admitted that such notice was not filed due to notations made in this board's online case management system. This board notes that such notations do not satisfy the requirement of R.C. 5717.01 that an appealing party file notice of an appeal with a county board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989). See, also, *Rumora v. Ashtabula Cty. Bd. of Revision*, BTA No. 2000-G-970 (Mar. 30, 2001), unreported. Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

JANYSS E WARD, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-855
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - JANYSS E WARD
Represented by:
JANYSS WARD
30201 GEBHART PL.
WILLOWICK, OH 44095

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Tuesday, August 13, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant filed notice of the appeal with this board forty-nine days after, and with the BOR nearly three months after, the mailing of the BOR's decision. As such, appellant failed to comply with the statutory requirement to file both notices within thirty days of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

TAHOE REAL ESTATE INVESTMENTS LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-593 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TAHOE REAL ESTATE INVESTMENTS LLC
Represented by:
RACHAEL DUGGINS
OWNER
4814 S RAEBURN DR
CINCINNATI, OH 45223

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the

provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notice of appeal was not filed with the Hamilton County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is,

dismissed.

OHIO BOARD OF TAX APPEALS

RAMONA JORDAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-519
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RAMONA JORDAN
OWNER
4970 E. WOODCREST
ORANGE VILLAGE, OH 44022

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

RISA ROTH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-462
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RISA ROTH
Represented by:
RISA S. ROTH
OWNER
24140 SHAKER BLVD.
SHAKER HTS, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

STEPHEN BAKER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-401
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - STEPHEN BAKER
14429 SUPERIOR
CLEVELAND HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellant's notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion during this board's telephonic hearing.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ROY W. & SUSAN E. DRUMM, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-831 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROY W. & SUSAN E. DRUMM
Represented by:
JOHN DRUMM
TRUSTEE
DRUMM TRUST
2781 TIFT ST.
CUYAHOGA FALLS, OH 44221

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
MARRETT HANNA
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added).

See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the

Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The county appellees attached to their motion the affidavit of the executive assistant to the BOR, asserting that appellants' notice of appeal was filed thirty-eight days after the mailing of the BOR's decision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such,

this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JAMES P. BRODIE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-600
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MEDINA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JAMES P. BRODIE
Represented by:
JAMES BRODIE
3394 VAN BURAN DRIVE
BRUNSWICK, OH 44212

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
60 PUBLIC SQUARE
MEDINA, OH 44256

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The county appellees attached to their motion the affidavit of the secretary to the BOR, asserting that appellant's notice of appeal was not filed with the Medina County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is,

dismissed.

OHIO BOARD OF TAX APPEALS

BRAD STEIDL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-522, 2019-523
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BRAD STEIDL
FACILITIES MANAGER
CBRE
19601 MAPLEWOOD AVE.
CLEVELAND, OH 44135

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notices with the BOR. Upon consideration of the existing records, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these

matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

RAMONA JORDAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-519
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RAMONA JORDAN
OWNER
4970 E. WOODCREST
ORANGE VILLAGE, OH 44022

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CSHFLW PROPERTIES 4, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1382, 2018-1497 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CSHFLW PROPERTIES 4, LLC
Represented by:
JEFFREY P. POSNER
ATTORNEY AT LAW
3393 NORWOOD ROAD
SHAKER HTS., OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

In these consolidated cases, appellant CSHFLW Properties 4 LLC appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's valuation of the subject property at $49,000 for tax year 2017. The parties waived their appearances at this board's hearing. Accordingly, we now decide the case on the notice of appeal and the transcript certified by the fiscal officer.

The subject property is improved with a single-family residence. The fiscal officer valued the property at $49,000 as of January 1, 2017. Appellant filed a complaint seeking a decrease in value to $35,100, based on the price for which it purchased the property at a

sheriff's sale in December 2016. At the BOR hearing, appellant's counsel stated that "the sale does not matter." Instead, counsel advocated for valuation of the property in accordance with the "sheriff's inspection & opinion of value report" signed by three certified appraisers, which indicated a value of $40,000. Because the sheriff's appraisal was commissioned by the county, and the same appraisers are used by the fiscal officer in the sexennial reappraisal process, appellant argues the sheriff's appraisal is probative of the true value of the subject property for tax purposes. To support his argument, appellant's counsel also presented the deposition of Shaundra Howard, the county employee responsible for sheriff's appraisal assignments. Counsel and members of the BOR had an extended colloquy about reliance on the sheriff's appraisal. The BOR ultimately rejected reliance on the sheriff's sale or the sheriff's appraisal, and stated that "BOR research finds that the County Fiscal Officer's value is justified." It issued a decision affirming the fiscal officer's $49,000 value, and appellant appealed to this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the fiscal officer nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8,*

L.L.C. v. Franklin Cty. Bd. of Revision, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, a sheriff's auction is a forced sale, which generally does not provide a reliable basis to value a property. *Moira Properties LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 2, 2019), BTA No. 2018-1159, unreported. This board must presume a sheriff sale is not arm's-length. Id. (citing *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723). In this case, appellant has presented no evidence to rebut the presumption that the sheriff's sale is not indicative of value. We therefore turn to appellant's appraisal evidence.

Appellant argues that the appraisal performed for the sheriff's sale should be accepted as the best evidence of the subject property's value. The two-page report, signed by three appraisers, indicates the subject property was viewed in September 2016, and opines a value of $40,000 based on the sales comparison approach. The report contains the addresses, sale dates, and sale amounts of three properties. The properties sold in March and May 2016 for prices of $10,000, $22,000, and $59,900. No adjustments to such sales are included in the report, nor are any additional details about the comparable sales. The Supreme Court rejected reliance on a sheriff's-sale appraisal in *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919, stating:

> "In this case, the BOR valued the property for tax years 2012 and 2013 based on a sheriff's-sale appraisal that opined a value as of June 13, 2012. In valuing the property in direct reliance on an opinion of value that did not correspond to the tax-lien date, the BOR committed legal error in contravention of *Olmsted* [*Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552 (1996)]. To be sure, even when an appraisal opines a value that does not coincide with the

> tax-lien date, factual information contained in that appraisal may still be regarded as furnishing potentially relevant evidence of a property's value as of the tax-lien date. See *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, ***, ¶ 16-17; *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, ***, ¶ 26-29. But here, the sheriff's-sale appraisal credited by the BOR contains no factual information that could furnish a basis for valuing the subject property as of the tax-lien date – it simply opines a value without any supporting facts or analysis. Nor was testimony offered to show how the appraisal's opinion of value could be applied to the tax-lien date." (Parallel citations and footnote omitted.) Id. at ¶18.

In the absence of any other evidence of value from which this board could independently determine value, the court held that the auditor's initial value should be reinstated. Id. at ¶22.

We see no reason to treat the evidence before us in this matter any differently than the court in *South-Western City Schools*, supra. As a member of the BOR noted in the BOR hearing on this matter, there is no indication that the appraiser(s) made adjustments to the comparable sales, nor is there any information about the properties to allow the BOR, or this board, to determine whether adjustments are necessary. See also *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported (appraisals typically rejected when the appraiser does not appear to authenticate, describe efforts taken in creating the report, answer board's questions, and answer questions of other parties); *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. Although appellant argued that the fact that the appraisal was commissioned by Cuyahoga County and was performed by appraisers who are

also used in the sexennial appraisal process should be sufficient to establish the competence and probative value of the opinion of value indicated, this board is tasked with independently determining value. In doing so, we must weigh and evaluate evidence. The sheriff's sale appraisal offered by appellant provides no detail that would allow us to perform such duties. We therefore reject reliance on the report in determining value for tax year 2017.

Appellant also provided a renovation contract, detailing repairs that were to be made to the property. Such evidence of the negative aspects of the property are of little utility in determining value without some quantification of the effect those aspects have on the property's market value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588; *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 100830, 2014-Ohio-4086, ¶17. Further, this board has repeatedly rejected the notion that dollar-for-dollar renovation costs directly correlate to value. See, e.g., *Bratslavsky v. Warren Cty. Bd. of Revision* (Feb. 3, 2009), BTA No. 2007-T-1415, unreported, at 6-7 ("Simply stated, 'cost and value are not necessarily synonymous.' The Appraisal of Real Estate [(13th Ed.2008)], at 319."). We therefore find the renovation contract is not probative of value.

Based upon the foregoing, we find appellant has failed to meet its burden to prove a value different from the fiscal officer's initial value. As the Supreme Court stated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23. Indeed, "[e]ven if some evidence tends to negate the auditor's original

valuation, it is proper to revert to that valuation when the BTA finds that the owner has not proved a lower value and there is otherwise 'no evidence from which the BTA can independently determine value.' (Emphasis added.) *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, ***." (Parallel citation omitted.) *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶24. Such is the case here, as we find no evidence in the record before us from which we can determine a value different than that initially determined by the fiscal officer.

Having disposed of the evidence before us, we order the property valued in accordance with the following values for tax year 2017:

PARCEL NUMBER 641-19-053

TRUE VALUE

$49,000

TAXABLE VALUE

$17,150

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1087 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

1100 HOME AVENUE PROERTIES, LLC
2000 BERKSHIRE ROAD
GATES MILLS, OH 44040

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 68-08515, 68-08516, 68-08517, 68-09303, and 68-08514, for tax year 2017. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property consists of roughly 2.1 acres and is improved with a single-story industrial building containing approximately 45,000 square feet of building area. The fiscal

officer initially assessed the subject's total true value at $1,046,470. The BOE filed a complaint with the BOR seeking an increase in value to $1,100,000. At the BOR hearing, the BOE presented evidence that the subject property transferred on June 3, 2015 for $1,100,000 and argued that the sale price establishes the true value of the property. The BOE also submitted listing information and a BOR decision letter that reflected the BOR had increased the value of the property to the sale price for tax year 2015, though the value was reduced for tax year 2017 during the triennial update. The BOR noted the update and appraiser's choice to ignore the 2015 sale when it voted to retain the fiscal officer's value for 2017. The BOE appealed the decision to this board, and the parties waived the opportunity to present additional evidence or legal argument.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, it is undisputed that the property transferred from Managed Real

Assets, Ltd. to 1100 Home Avenue Properties, LLC, on June 3, 2015 for $1,100,000. No one contests the arm's-length nature of the sale or that the recorded price reflects consideration paid for the subject real property. Rather, the BOR rejected the sale because the value was reduced during the county's triennial update. In *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, the court held that a sale is not presumed to be recent when a sale occurred more than 24 months before the tax lien date *and* the auditor (or fiscal officer) determined a different value during the sexennial reappraisal. The court has since reaffirmed the importance that both criteria must be met in order to shift the burden of proof from the party opposing the sale to the party in favor of the adoption of the sale price. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612 (holding this board erred in finding that a facially qualifying sale of a property was too remote when it postdated the tax lien date by more than 24 months). Thus, even if an auditor's (or fiscal officer's) rejection of a sale during a countywide update would cause a sale to be too remote from the tax lien date, the sale in this case took place fewer than 24-months before the date for which the sale was rejected, i.e., the tax-lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 68-08515

TRUE VALUE

$19,280

TAXABLE VALUE

$6,750

PARCEL NUMBER 68-08516

TRUE VALUE

$8,560

TAXABLE VALUE

$3,000

PARCEL NUMBER 68-08517

TRUE VALUE

$7,490

TAXABLE VALUE

$2,620

PARCEL NUMBER 68-09303

TRUE VALUE

$1,034,910

TAXABLE VALUE
$362,220

PARCEL NUMBER 68-08514

TRUE VALUE

$29,760

TAXABLE VALUE

$10,420

OHIO BOARD OF TAX APPEALS

MEDINA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. MEDINA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-819, 2018-991 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MEDINA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
60 PUBLIC SQUARE
MEDINA, OH 44256

CF FOX MEADOW ARCIS, LLC
Represented by:
ROBERT K. DANZINGER
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Both the Medina City Schools Board of Education ("BOE") and property owner CF Fox Meadow Arcis LLC ("CF") appeal from several decisions of the Medina County Board of Revision ("BOR") valuing the subject property (a golf course and country club) for tax year

2017. The parties waived their appearances at this board's hearing, and no party filed additional written argument. We now decide appeal on the notice of appeal and the transcript certified by the auditor ("S.T.").

The subject property is comprised of fifteen parcels. The auditor valued the parcels at a combined value of $4,120,530 for tax year 2017. CF filed a decrease complaint with an opinion of value at $2,100,000. The BOE filed a counter complaint asking the BOR to retain the auditor's valuation. At the BOR hearing, CF offered the appraisal report and testimony of Samuel Koon, MAI. Mr. Koon opined a value of $2,010,000 using the sales comparison and income capitalization approaches to value. CF amended its complaint to reflect Mr. Koon's opinion of value. The BOE did not present an appraisal or offer any other evidence.

When the BOR rendered a decision, it orally stated it found Mr. Koon's appraisal to be the best evidence of value. It also stated it was valuing the property in accordance with the appraisal. However, when it distilled its decision to written form, it valued the properties at approximately $2,100,000 (the original complaint value) not $2,010,000 (the appraised value). Again, both the BOE and CF appealed. The parties waived their appearances at this board's hearing, and no party filed written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent,

arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. Here, the most recent sale was a going concern sale in 2014, which we presume is too remote and has limited utility in determining value as of January 1, 2017. We note that no party asks this board to adopt the 2014 sale price.

This board's responsibility is to determine value based on the best evidence of value. See *Hill v. Hamilton Cty. Bd. of Revision* (Apr. 3, 2019), BTA No. 2018-1392. This board has wide discretion when weighing appraisal evidence. *Cardinal Federal v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 13 (1975). Here, we find Mr. Koon's appraisal to be the best evidence of value. Mr. Koon developed the income capitalization and sales comparison approaches. This board finds the data he relied upon to be credible evidence. First, he thoroughly developed an analysis of the local and regional economy using market data. Mr. Koon made detailed findings about the course and its improvements. He placed most weight on his income approach finding it to be most reflective of the market. Mr. Koon further developed that income approach using fee schedules from five comparable courses including the subject. He also considered initiation fees, turnover, merchandise sales, food sales, and beverage sales. Mr. Koon also developed his operating expense figures using market data along with actual revenue and expenses for the course from 2015 to 2017.

Mr. Koon based his sales comparison approach on five sales of comparable golf courses, which he also adjusted to reflect the character of the subject course. When reconciling values, Mr. Koon extracted furniture, fixtures, and equipment leaving a final opinion of value at $2,010,000. Again, the BOE presented no appraisal or other evidence to contradict Mr. Koon's appraisal. Accordingly, we find the BOR correctly found Mr. Koon's appraisal to be the best evidence of value.

Again, both sides appealed the BOR's decision. However, the BOE neither presented evidence at the BOR nor to this board. The BOE also did not submit legal argument. Accordingly, we find the BOE has failed to carry its burden. While CF did not file written argument, it appears CF appealed because of the discrepancy between the BOR's finding that Mr. Koon's appraisal was the best evidence of value and the BOR's written decisions. We are unable to find a principled reason for the discrepancy. Regardless, this board independently weighs the evidence, and order's the parcels valued in accordance with Mr. Koon's value of

$2,010,000 for tax year 2017, i.e., as follows:

PARCEL NUMBER 030-11A-17-005 TRUE

VALUE

$48,460

TAXABLE VALUE

$16,960

PARCEL NUMBER 030-11A-17-061

TRUE VALUE

$320

TAXABLE VALUE

$110

PARCEL NUMBER 030-11A-17-008

TRUE VALUE

$24,240

TAXABLE VALUE

$8,480

PARCEL NUMBER 030-11A-18-087

TRUE VALUE

$53,140

TAXABLE VALUE

$18,600

PARCEL NUMBER 030-11A-18-088

TRUE VALUE

$1,634,730

TAXABLE VALUE

$572,160

PARCEL NUMBER 030-11A-21-086

TRUE VALUE

$96,920

TAXABLE VALUE

$33,920

PARCEL NUMBER 030-11A-27-009

TRUE VALUE

$130,850

TAXABLE VALUE

$45,800

PARCEL NUMBER 030-11A-17-062

TRUE VALUE

$180

TAXABLE VALUE

$60

PARCEL NUMBER 030-11A-18-092

TRUE VALUE

$490

TAXABLE VALUE

$170

PARCEL NUMBER 030-11A-21-002

TRUE VALUE

$380

TAXABLE VALUE

$133

PARCEL NUMBER 030-11A-21-003

TRUE VALUE

$650

TAXABLE VALUE

$230

PARCEL NUMBER 030-11A-22-146

TRUE VALUE

$470

TAXABLE VALUE

$160

PARCEL NUMBER 030-11A-22-147

TRUE VALUE

$9,500

TAXABLE VALUE

$3,330

PARCEL NUMBER 030-11A-22-148

TRUE VALUE

$170

TAXABLE VALUE

$60

PARCEL NUMBER 030-11A-22-149

TRUE VALUE

$9,500

TAXABLE VALUE

$3,330

OHIO BOARD OF TAX APPEALS

PERRY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-914 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PERRY LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

MEADOW WIND ASSOCIATES LP CORE LOGIC
P.O. BOX 167928
IRVING, TX 75016

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Perry Local Schools Board of Education ("BOE") appeals from a decision of the Stark County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. Only the BOE participated at this board's hearing. We decide the case on the notice of appeal, the transcript certified by the fiscal officer, this board's hearing record ("H.R."), and the BOE's exhibits submitted at our hearing.

The facts of this case are substantially similar to ones this board considered in *Plain*

Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision (Dec. 12, 2018), BTA No. 2017-1025, unreported ("*Advanced Auto*"), and *Canton City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 17, 2018), BTA No. 2017-1026, unreported ("*Market Avenue*"). It all three cases, the auditor made a mid-triennial decrease to the true value of the property. In all three cases, the respective BOE argued the decrease was arbitrary and improper. Here, specifically, the auditor valued the subject property, a nursing home, at $2,649,400 for tax year 2016. The auditor made a mid-triennial downward adjustment to $2,263,100 for tax year 2017. The BOE presented a table showing changes the auditor made for tax year 2017. With regard to this property, the auditor's records indicate the change was made because the auditor changed the "condition of improvements***from 2 to 3 (Good to Average)." H.R., Ex. A. 2018 was a reappraisal year, and the auditor valued the property at $2,414,800 for that year. However, it appears the improvement quality score remained unchanged at 3 (average) for tax year 2018. The BOE filed a complaint asking the auditor's 2016 value be carried forward to tax year 2017. The BOR retained the auditor's original 2017 value, and the BOE appealed to this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

This board has recognized it will respect its own precedent in cases involving similar facts. See *Middleton v. Cuyahoga Cty. Bd. of Revision* (Jan. 13, 1995), BTA No. 1994-K-1137, unreported; *Mercury Mach. Co. v. Limbach*, 94 Ohio App.3d 116, 123 (8th Dist.1994)

("Although an [agency] should be willing to change its position when the need therefor is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decision to assure the predictability which is essential in all areas of law[.]"). This board recognizes in this case, as in *Advanced Auto*, that it is the auditor's duty to value and assess taxes against real property. *AERC Saw Mill Village v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468. The Ohio Supreme Court has recognized that, while an auditor typically "does carry over the value" from one year of the triennium to the next, the auditor can adjust values based on changes to the property. More importantly, the revaluation of property falls "within the auditor's ordinary duties of office" and a "presumption of regularity applies." *Advanced Auto*, supra. In this case, this board is unable to find the BOE overcame that presumption. The auditor decided that the quality of the improvements was inaccurate for 2017. He adjusted his values based on those changes. That determination is presumed reasonable. The BOE did not present testimony or tangible evidence affirmatively showing the auditor's change in value was completely baseless and arbitrary. See, e.g., *Johnson v. Greene Cty. Bd. of Revision* (Apr. 3, 2018), BTA No. 2017-945, unreported (mid-triennial change reversed when auditor's representative testified change was not based on actual change in value). Also important is the fact the BOE did not present "additional independent evidence of value." *Advanced Auto*, supra.

Accordingly, based upon our review of the record, this board finds the basis cited insufficient to support the claimed adjustment to value. For tax year 2017, we order the subject valued as follows:

PARCEL NUMBER 700521

TRUE VALUE

$2,263,100

TAXABLE VALUE

$792,090

OHIO BOARD OF TAX APPEALS

MARLINGTON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-913 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARLINGTON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

STARK HEALTH CARE INVESTMENTS LLC
1661 OLD HENDERSON ROAD
SUITE 100
COLUMBUS, OH 43220

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Marlington Local Schools Board of Education ("BOE") appeals from a decision of the Stark County Board of Revision ("BOR") retaining the auditor's value of the subject property at $2,750,700 for tax year 2017. Only the BOE participated in this board's hearing. We decide the case on the notice of appeal, the transcript certified by the auditor, and this board's hearing record ("H.R.").

The facts of this case are substantially similar to ones this board considered in *Plain*

Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision (Dec. 12, 2018), BTA No. 2017-1025, unreported ("*Advanced Auto*"), and *Canton City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 17, 2018), BTA No. 2017-1026, unreported ("*Market Avenue*"). In all three cases, the auditor made a mid-triennial decrease to the true value of the property. In all three cases, the respective BOE argued the decrease was arbitrary and improper. Here, specifically, the auditor valued the subject nursing home at $3,672,400 for tax year 2016. The auditor decreased the value to $2,750,700 for tax year 2017. The BOE supplied auditor's records showing the change was made because the auditor determined the condition of the improvements had changed, i.e., "from 2 to 3 (Good to Average)." H.R., Ex. A. During the 2018 reappraisal, the auditor increased the value to $3,366,800 and appears to have returned the condition score to "good." The BOE argued to the BOR and this board that the change was arbitrary. The BOE filed a complaint asking the auditor's 2016 value be carried forward to tax year 2017. The BOR retained the auditor's original 2017 value, and the BOE appealed to this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

This board has recognized it will respect its own precedent in cases involving similar facts. See *Middleton v. Cuyahoga Cty. Bd. of Revision* (Jan. 13, 1995), BTA No. 1994-K-1137, unreported; *Mercury Mach. Co. v. Limbach*, 94 Ohio App.3d 116, 123 (8th Dist.1994)

("Although an [agency] should be willing to change its position when the need therefor is clear and it is shown that prior decisions are in error, it should also respect its own precedents in its decision to assure the predictability which is essential in all areas of law[.]"). This board recognizes in this case, as in *Advanced Auto*, that it is the auditor's duty to value and assess taxes against real property. *AERC Saw Mill Village v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468. The Ohio Supreme Court has recognized that, while an auditor typically "does carry over the value" from one year of the triennium to the next, the auditor can adjust values based on changes to the property. More importantly, the revaluation of property falls "within the auditor's ordinary duties of office" and a "presumption of regularity applies." *Advanced Auto*, supra. In this case, this board is unable to find the BOE overcame that presumption. The auditor made a change to the condition of the property, and that decision is entitled to a presumption of validity. Although the BOE argues no changes occurred to the property that would justify the temporary decrease in value followed by an increase in value, this board is without testimony from a credible witness or other evidence to conclude no changes occurred. The BOE did not present testimony or tangible evidence affirmatively showing the auditor's change in value was completely baseless and arbitrary. See, e.g., *Johnson v. Greene Cty. Bd. of Revision* (Apr. 3, 2018), BTA No. 2017-945, unreported (mid-triennial change reversed when auditor's representative testified change was not based on actual change in value). Also important is the fact the BOE did not present "additional independent evidence of value." *Advanced Auto*, supra.

Accordingly, based upon our review of the record, this board finds the basis cited insufficient to support the claimed adjustment to value. See id. For tax year 2017, we order the subject valued as follows:

PARCEL NUMBER 7700301

TRUE VALUE

$2,750,700

TAXABLE VALUE

$962,750

OHIO BOARD OF TAX APPEALS

MICHAEL E. CASSITY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-433, 2018-434
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
BROWN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MICHAEL E. CASSITY
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - BROWN COUNTY BOARD OF REVISION
Represented by:
ZAC CORBIN
PROSECUTING ATTORNEY
BROWN COUNTY
510 E. STATE STREET, SUITE 2
GEORGETOWN, OH 45121

Entered Wednesday, August 14, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Michael E. Cassity appeals from two decisions of the Brown County Board of Revision ("BOR") determining Cassity's property did not qualify for the current agricultural use value ("CAUV") program for tax year 2017. Having made that determination, the BOR ordered recoupment of the tax savings Mr. Cassity gained over the prior three years pursuant to R.C. 5713.34. Mr. Cassity appeals both decisions. We now consider the matter on the notices of appeal, the transcript certified by the auditor, the supplemental transcript, and the parties' written arguments.

The salient facts are not in dispute. The subject is a single, 11.17-acre parcel of land in Brown County. The parties agree seven acres are used to grow row crops generating more than

$2,500 in gross income and therefore are "devoted exclusively to agricultural use," as that phrase is defined by R.C. 5713.30. The parties agree the remaining 4.17 acres are non-commercial timberland. That portion of the property does not generate at least $2,500 of gross income.

When cases are appealed from a board of revision to this board, an appellant bears the burden. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and render a decision consistent with that evidence. *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The CAUV program grants preferential tax treatment to "land devoted exclusively to agricultural use." R.C. 5713.31. This case turns on the "ten-acre rule" contained in R.C. 5713.30(A)(1)-(2). CAUV eligibility is tested differently depending on whether the property is less than ten acres or if the property is ten acres or more. If the property is ten acres or more then R.C. 5713.30(A)(1) applies. If the property is less than ten acres, R.C. 5713.30(A)(2) applies. This case turns on whether the noncommercial timberland should be included in the acreage calculation. If it does, CAUV eligibility is determined by R.C. 5713.30(A)(1) because the 4.17 acres of noncommercial timberland plus the seven acres of cropland equals more than ten acres. If it does not, R.C. 5713.30(A)(2) applies because the seven acres of cropland falls shy of the ten-acre level. The primary difference between the two subsections is an income test that must be satisfied if the property is less than ten acres. No such income test applies to property that is ten acres or more.

Mr. Cassity contends the auditor and board of revision improperly removed his property from the CAUV program. He argues the subject is entitled to be returned to the CAUV program because the property satisfies R.C. 5713.30(A)(1). We agree. The Ohio Supreme Court has

repeatedly held this board is to apply the "plain and ordinary meaning" of tax statutes. *Adams v. Testa*, 152 Ohio St.3d 207, 2017-Ohio-8853. When "the language of a statute is plain and unambiguous and conveys a clear and definite meaning, then there is no need" to "resort to the rules of statutory construction." *State v. Kreischer*, 109 Ohio St.3d 391, 2006-Ohio-2706. As applied to this case, R.C. 5713.30(A) is plain and unambiguous. That statute says "land devoted exclusively to agricultural use" means:

> "(1) Tracts, lots, or parcels of land totaling not less than ten acres to which, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, one or more of the following apply:
>
> "(a) The tracts, lots, or parcels of land were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the production for a commercial purpose of timber, *field crops*, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, *or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use*." (Emphasis added.) Id.

No party disputes seven acres are used to produce field crops generating more than $2,500 in gross income, and no party disputes 4.17 acres are noncommercial timberland. No party disputes the acres are contiguous. Accordingly, the statute says the entire property qualifies as "devoted exclusively to agricultural purposes because, for tax year 2017, "the tracts, lots, or parcels were devoted exclusively to***the production [of]***field crops***[and] "the

growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use." Accordingly, we find Mr. Cassity's property qualifies for the CAUV program for tax year 2017 under the plain meaning of R.C. 5713.30(A).

The BOR relies almost exclusively on the Supreme Court's ruling in *Dircksen v. Green Cty. Bd. of Revision*,109 Ohio St.3d 470, 2006-Ohio-2990. As the BOR correctly notes, the *Dircksen* property was a 26.25-acre parcel consisting of five acres of cropland and 21.25 acres of noncommercial timberland. This board finds *Dircksen* distinguishable because the cropland in *Dircksen* "did not otherwise qualify for CAUV consideration." Here, the cropland independently qualifies under R.C. 5713.30(A)(2). Since it independently qualifies, R.C. 5713.30(A)(1)(a) incorporates the noncommercial timberland since "the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use." Our interpretation is consistent with the Supreme Court's holding in *Maralgate, L.L.C. v. Greene Cty. Bd. of Revision*, 130 Ohio St.3d 316, 2011-Ohio-5448 and this board's holding in *Synergy Development, Ltd. v. Greene Cty. Bd. of Revision* (Sept. 15, 2006), BTA No. 2005-T-585, unreported.

While *Maralgate* primarily dealt with the common ownership requirement, the court made clear noncommercial timber qualified for CAUV status under R.C. 5713.30(A) when contiguous to otherwise qualifying agricultural property. Id. at ¶¶ 28-29. The county argued CAUV status should be applied on an "acre-by-acre basis." Id. at ¶ 31. The court rejected such a view holding "there are about 40 acres of noncommercial timberland on the parcel, and they qualify for tax preference by virtue of their contiguity and common ownership with the farm." Id. at ¶ 37. With regard to the ten-acre rule, the only difference is the *Maralgate* cropland qualified independently under R.C. 5713.30(A)(1) not R.C. 5713.30(A)(2), but that distinction

is meaningless because all that is required is that the adjacent cropland "otherwise qualify." Our decision in *Synergy*, supra, also supports that interpretation. In that case, we held noncommercial timberland qualified for CAUV status when contiguous to otherwise qualifying property without regard to the fact that noncommercial timberland constituted over one-third of the gross area. See also *Safreed v. Carroll Cty. Bd. of Revision* (May 12, 2009), 2006-H-1735, unreported.

For these reasons, we find BOR erred by removing the subject from the CAUV program for tax year 2017 and ordering recoupment for tax years 2014-2016. We reverse the 2017 determination and order the property be given CAUV status for that year. We vacate the recoupment order.

OHIO BOARD OF TAX APPEALS

GREEN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-1386 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GREEN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
TIMOTHY J. WALSH
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

JJ&W, XI, LTD.
Represented by:
GERALD BAKER
LAW OFFICE OF GERALD L BAKER
3711 WHIPPLE AVE NW
CANTON, OH 44718

Entered Thursday, August 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Green Local Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's value of the subject property, owned by appellee JJ&W, XI, LTD, for tax year 2017. This board held an evidentiary hearing, but only the BOE appeared. We now decide the case on the notice of appeal, the fiscal officer's statutory transcript, this board's hearing transcript ("H.R."), and the BOE's exhibits.

The fiscal officer valued the subject, a commercial building, at $4,951,680 for tax year 2017. The BOE filed an increase complaint with an opinion of value at $7,127,750 per a February 2018 sale. In support, the BOE supplied the conveyance fee statement and the relevant general warranty deed. Taken together, those documents show the subject transferred in February 2018 for $7,150,000. The conveyance fee statement states, and the BOE does not dispute, that $22,250 of the sale price was attributable to non-realty. See H.R. at 7, Ex. 1. The appellee property owner did not appear at either the BOR hearing or this board's hearing. The BOR ultimately retained the fiscal officer's value finding "lack of sufficient evidence." One member also noted he believed the 2018 sale was too remote. Another member dissented arguing the BOE's opinion of value should be adopted.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. A sale that post-dates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d

137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this case, the BOE met its initial burden by presenting a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to create presumption). Those documents confirm the appellee property owner purchased the property in February 2018 for $7,150,000. There is no dispute the portion of that sale price attributable to real property was $7,127,750. Accordingly, the burden shifted to any party to rebut. However, no party has submitted evidence in rebuttal or even participated in this proceeding. Thus, we find the presumption created by the sale has not been rebutted.

While the BOR found the sale was not supported by sufficient evidence, a facially valid sale can be presented using only the sale documents. The Ohio Supreme Court has been clear that "how a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." *Lunn*, supra, at ¶ 16. Additionally, while one BOR member found the February 2018 was too remote, the *Lone Star* court was clear a sale that postdates tax-lien date still creates a presumption of value even if the sale occurs several years after tax-lien date. Id. at ¶ 19. There is no evidence in the record the character of the subject change substantially between tax-lien date and the sale date.

Therefore, we order the property valued as follows for tax year 2017:

PARCEL NUMBER 28-08694

TRUE VALUE

$7,127,750

TAXABLE VALUE

$2,494,710

OHIO BOARD OF TAX APPEALS

TALAWANDA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1274 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

OXFORD STAR, LLC
300 S. MAIN STREET
SELLERSVILLE, PA

Entered Thursday, August 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Talawanda City Schools Board of Education ("BOE") appeals from a decision of the Butler County Board of Revision ("BOR") valuing the subject property at $1,785,000 for tax year 2017. We now decide the case on the notice of appeal, the transcript certified by the auditor ("S.T."), and the BOE's written argument.

The subject property is a hotel near Miami University and is owned by appellee Oxford Star LLC ("Oxford Star"). The auditor valued the property at $1,723,210 for tax year 2017. The

BOE filed an increase complaint requesting a new value of $2,825,000 per a sale of the property on August 16, 2017. The BOE supplied the conveyance fee statement, which indicates the sale price was $2,825,000 and no portion of the sale price was attributable to non-realty. Oxford Star filed a counter-complaint with an opinion of value of $1,785,000. Oxford Star argued the parties allocated value in the purchase agreement to account for goodwill, equipment, and personal property. Oxford Star supplied a document titled "addendum to agreement of sale dated July 13, 2017." That document was executed on August 9, 2017 and indicates the parties valued the real property at $1,785,000 with the remaining consideration allocable to goodwill, equipment, and personal property. At the BOR hearing, Oxford Star presented the testimony of its owner. He testified the only document supporting the allocation was the addendum. He testified no list of inventory, equipment, or personal property was created. It also appears the owner considered certain fixtures, like water heaters, to be personal property. Oxford Star presented no expert testimony about the value of the real property, personal property, goodwill, or equipment. The BOR ultimately valued the subject at $1,785,000, which is the amount allocated to real property on the agreement. The BOE appealed to this board, and only the BOE filed written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26,

2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. Here, the BOE presented a facially valid, post-tax-lien dated sale of the property for $2,825,000. The basic facts of the sale are confirmed in the sale documents the BOE presented. The Ohio Supreme Court has explained that a taxpayer asking a BOR to adopt a sale value can satisfy their initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show *** that no evidence controverts the *** arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with purchase documents. See id. Corroborating testimony is unnecessary. *Lunn*, supra, at ¶ 14. Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id. Here, the BOE presented evidence of a facially valid sale, which shifts the burden of rebuttal to any opposing party. *Lone Star*, supra, at ¶ 19.

Oxford Star argues the sale price included non-realty, i.e., goodwill, personal property,

and equipment. The Ohio Supreme Court has been clear that "the party advocating for a reduction below the full sale price due to an allocation to other assets bears the burden of showing the propriety of such action and must provide 'corroborating indicia' of the appropriate allocation." *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property value." *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶ 11. The Supreme Court has also held in some instances an appraisal can be used to show the value attributable to realty versus non-realty. Id. Again, it was Oxford Star's burden, as the owner, to prove allocation. See *Kenowa MHP LLC v. Ross Cty. Bd. of Revision* (Jan. 7, 2019), BTA No. 2017-1033, unreported (owner has the burden of proving allocation); *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-127, unreported.

Here, we find Oxford Star has not carried its burden of proving what portion of the sale price, if any, was attributable to non-realty. Oxford Star relies almost entirely on the agreement. However, that agreement is conclusory and unsupported by any tangible evidence, e.g., a business valuation, valuation of personal property, a real property appraisal. This board has rejected similar, unsupported agreements in the past. See, e.g., *Dayton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Sept. 25, 2018), BTA No. 2017-2273, unreported. The Ohio Supreme Court has likewise rejected such unsupported evidence holding "the mere fact that the parties to a bulk sale of assets have agreed to allocate a particular amount to real estate does not by itself establish the propriety of the allocation." *Cincinnati School Dist.*, supra. We also note Oxford Star's owner suggested some fixtures were inappropriately included in the equipment category. Further, the statements of its owner conflict with the conveyance fee statement signed by Oxford Star's representative, which states no portion of the sale

included non-realty.

Even if Oxford Star had presented such evidence, it is unlikely the goodwill could have been categorized as a separate asset for real property taxation purposes. The Ohio Supreme Court addressed a similar fact pattern, also involving a hotel, in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258 ("*KDM*"). In *KDM*, the court applied a line of cases determining when goodwill can be separated from real property. In the context of a hotel like the *KDM* hotel, the court held goodwill was not separate asset for real property valuation purposes. Id. at ¶ 33 (citing *St. Bernard Self Storage*, 115 Ohio St.3d 365, 2007-Ohio-5249 and *Dublin Senior Community v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455 (1997)). We find the facts of *KDM* largely indistinguishable from the facts of this case.

For these reasons, it is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER H4100-019-000-059

TRUE VALUE

$2,825,000

TAXABLE VALUE

$988,750

OHIO BOARD OF TAX APPEALS

RBT INDUSTRIES, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1467
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RBT INDUSTRIES, LLC
Represented by:
THOMAS D. DRAKE
ATTORNEY AT LAW
DRAKE, PHILLIPS, KUENZLI & CLARK
301 S. MAIN STREET
4TH FLOOR
FINDLAY, OH 45840

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

JACKSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Thursday, August 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner RBT Industries ("RBT") appeals from a decision of the Stark County Board of Revision valuing the subject property at $2,975,000 for tax year 2017. RBT and the appellee school board appeared at this board's hearing. We now decide the case on the notice of appeal, the transcript certified by the auditor, and this board's hearing record.

The auditor valued the subject at $2,750,600 for tax year 2017, and the school board

filed a complaint with an opinion of value at $2,975,000 per a March 2018 sale. RBT filed a counter-complaint with an opinion of value of $1,085,000. The school board supplied the conveyance fee statement, which confirms RBT purchased the property for $2,975,000, albeit in February 2018. The statement indicates no portion of the sale price was attributable to non-realty. In rebuttal, RBT argued the sale did not create a presumption of value because the subject was purchased subject to an existing lease to Best Buy. In turn, Best Buy had sublet the subject to RBT, which had purchased the subject from the prior owner in the sale at issue in this case.

RBT supplied the relevant lease, sublease, and the purchase agreement. RBT also submitted unadjusted market data, an income approach statement, market rent data, and a table of interest rates for the fourth quarter of 2017. However, RBT submitted no testimony from any person with knowledge of the sale transaction or any of the evidence presented. Instead, RBT's counsel presented the evidence and argued the value of $1,085,000 was appropriate. Counsel stated he was "not an appraiser" and noted RBT "did not obtain an appraisal." He also admitted there were notable differences between the subject and RBT's comparables and conceded they were "not solid comparable sales." He also noted the comparables were substantially different from the subject. Of note, one of the comparables is a Moose Lodge, which is substantially different from a big box store like the subject. Counsel further argued the sale was not arm's-length because the RBT was a sublessee of Best Buy and the tenant of the property.

The BOR ultimately adopted the sale, and RBT appealed. Only counsel for RBT and the school board appeared at this board's hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd.*

of Revision, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio

St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. *Lunn*, supra,at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that the sale was not arm's-length. Id.

Here, RBT argues the sale was not arm's-length because of the preexisting relationship between RBT and the seller. It also argued the sale should be rejected because the property sold subject to a lease. RBT further argued its value should be adopted based on the market research and calculations developed by counsel. We find none of those arguments persuasive for the following related reasons.

First, this board is unable to find the evidence presented by RBT to be credible because it consists almost entirely of hearsay statements and unauthenticated documents, which themselves are also largely hearsay. RBT had the opportunity to bring a person with personal knowledge of the sale or the market data to either the BOR hearing or this board's hearing. It chose not to and instead relied on statements of counsel who admitted to having no actual, firsthand knowledge of the relevant facts. This board has been clear statements of counsel are not evidence. See *The Ohio State Club and University Estates v. Athens Cty. Bd. of Revision* (Dec. 21, 2010), BTA No. 2018-V-1015, unreported. Even if they were, counsel admitted to having no actual knowledge of the transaction or of the appraisal evidence presented.

Second, we are unable to credit the lease documents with much weight. Not only are the leases unauthenticated and hearsay, the Ohio Supreme Court has been clear an existing lease

does not destroy the presumption created by the sale per se. See *Menlo Realty Income Properties 28 LLC v. Franklin Cty. Bd. of Revision* (Apr. 15, 2019), BTA No. 2016-445, unreported (quoting *Spirit Master Funding IX LLC v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4302). While an above-market lease (or other factors) could be used as evidence to rebut the sale, the record contains no credible evidence the lease was above market. Additionally, the record indicates the lease also expired in February 2018, meaning the lease expired before or shortly after the sale was completed. Additionally, landlord-tenant sales are not per se not arm's-length. A party must supply competent evidence to show the sale was not arm's-length. *Fostoria City Schools Bd. of Edn. v. Wood Cty. Bd. of Revision* (Feb. 19, 2019), BTA No. 2018-1187, unreported. Here, there is no evidence that the parties were not acting in their own self-interests. See *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989); *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶33-34.

Third, this board does not find the purported appraisal presented by counsel to the BOR is competent evidence of value. While it is true appraisal evidence can be used to rebut a sale, the evidence must be credible, competent, and probative. See *Menlo*, supra. Here, counsel is not an appraiser and admitted his comparables were not actually comparable. Our review of the record confirms he was correct. The comparables vary significantly from the subject. Moreover, this board has held that raw sales data alone is generally not a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a

valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). We cannot find RBT's unadjusted sales data competent evidence of value of the subject. Additionally, the income approach calculation is unsupported, and this board cannot afford it any weight. Counsel created the one-page estimate, but nothing in the record supports his expertise or methodology. The statement relies on income and expense data, for which there is no market data support. Counsel calculated a capitalization rate, but the record has no credible evidence on how he constructed that rate, where he obtained his data, or how he came to his conclusion. We therefore find that the evidence submitted by counsel is not probative of value.

Accordingly, we find the school board has presented a facially valid sale, which has not been rebutted. We order the subject valued as follows for tax year 2017:

PARCEL NUMBER 1619960

TRUE VALUE

$2,975,000

TAXABLE VALUE

$1,041,250

OHIO BOARD OF TAX APPEALS

MK MENLO PROPERTY OWNER LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2015-1845, 2015-1869, 2015-1870 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MK MENLO PROPERTY OWNER LLC
Represented by:
STEPHEN SWAIM
ATTORNEY AT LAW
370 SOUTH 5TH ST., #G7
COLUMBUS, OH 43215

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
TIMOTHY J. WALSH
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

TALLMADGE CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, August 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These appeals are again considered by this board following remand by the Supreme Court of Ohio. *MK Menlo Property Owner, L.L.C. v. Summit Cty. Bd. of Revision*, 154 Ohio St.3d 273, 2018-Ohio-4304. In its decision, the Supreme Court vacated this board's December 14, 2016 decision and remanded for further proceedings on the authority of *Terraza 8, L.L.C. v.*

IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision, 155 Ohio St.3d 254, 2018-Ohio-4302. Specifically, this board is tasked with fully considering the appraisal evidence presented by the appellant property owner, MK Menlo Property Owner, LLC ("MK Menlo"). We therefore proceed to again consider the matter upon the notices of appeal, the statutory transcripts certified by the county fiscal officer pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the written argument submitted by the parties prior to the appeal. In accordance with the court's instruction on remand, no additional evidence was permitted.

The subject property is a 2.234-acre site improved with a 14,776-square-foot retail building occupied by Rite Aid. MK Menlo and the Tallmadge City School District Board of Education ("BOE") challenge the fiscal officer's initial valuation of the property for tax year 2014, i.e., $4,419,880. MK Menlo filed a complaint requesting a decrease in value to $1,546,970. The BOE filed a complaint requesting an increase in value to $5,330,000, based on the sale of the subject property for that amount in May 2014. At the Summit County Board of Revision ("BOR") hearing, and before this board, MK Menlo argues the May 2014 sale reflected the value of a long-term lease on the property and therefore does not reflect the market value of the fee simple unencumbered interest in the property as required by R.C. 5713.03. No witnesses testified before the BOR. MK Menlo submitted a copy of the lease on the subject property and comparable sales data; the BOE relied on the recorded conveyance fee statement and deed indicating a transfer of the property between Tallmadge RA Associates, LLC and MK Menlo on May 17, 2014 for $5,330,000. The BOE noted that the fiscal officer's value was based on a prior BOR decision which accepted the price from a prior sale of the property, in November 2012. The BOR issued a decision finding no change to the fiscal officer's initial valuation was warranted, and both parties appealed to this board.

At this board's hearing, MK Menlo again presented the lease on the property. H.R., Ex. B. It also presented the appraisal report and testimony of Roger A. Sours, MAI. Mr. Sours appraised the property as of January 1, 2015 (one year removed from tax lien date) but testified his final value conclusion of $2,220,000 would be the same for January 1, 2014 (tax lien date) due to the market in the area being stable during that time. H.R. at 26. His value conclusion was based on the sales comparison and income capitalization approaches to value. He testified he did not rely on the May 2014 sale based on MK Menlo's counsel's statement that the sale included the value of the lease on the property. Id. at 15, 28. Mr. Sours further testified that he had not, as of the date of the hearing, reviewed the lease in place on the property. Id. at 28, 46. Although the BOE objected to consideration of Mr. Sours' report in light of the recent sale of the property, such objection was overruled by the court's remand and citation to *Terraza 8*, supra, and *Spirit Master Funding*, supra. The BOE presented no independent evidence of value, apart from the evidence of the May 2014 sale.

The court held in *Terraza 8*, supra, that the language of amended R.C. 5713.03, now "allows taxing authorities to consider non-sale-price evidence – particularly evidence of encumbrances and their effect on sale price – in determining the true value of property that has been the subject of a recent arm's-length sale." Id. at ¶27. The court elaborated in *Spirit Master Funding*, supra, at ¶9:

> Later, in *Bronx Park* [*S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*], we further explained that "when property was the subject of a recent arm's-length sale, the General Assembly has directed taxing authorities to consider not just the sale price but also any other evidence the parties present that is relevant to the value of the unencumbered fee-simple estate." 153 Ohio St.3d 550, 2018-Ohio-1589, ***, at

> ¶ 12. The school board's argument ignores the fact that appraisal evidence can both attack a sale price as evidence of true value and provide affirmative evidence of value in its own right. *See Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855, ***, ¶ 14. By showing that the subject property was not encumbered by an above-market lease at the time of the sale, the school board addresses only one aspect of [the property owner's] appraisal. It fails to recognize that [the owner's appraiser's] valuation may have some evidentiary value as an independent matter apart from that concern.

(Parallel citations omitted.) We therefore proceed to consider the May 2014 sale of the subject property, the lease submitted by MK Menlo, and Mr. Sours' appraisal report and testimony, in independently determining the subject property's value as of January 1, 2014.

The parties do not dispute that the subject property sold for a recorded price of $5,330,000 in an arm's-length sale recent to tax lien date. MK Menlo argues the sale should be disregarded as the best evidence of value because the sale price reflected the value of a long-term lease on the property. Notably, although MK Menlo submitted the lease to the BOR after its hearing, and again at this board's hearing, no one personally involved with the lease or the sale has testified at either level to authenticate the lease or explain the circumstances of the sale. The lease term is for twenty years, with six five-year extension terms. The stated rent for the initial, twenty-year term of the lease is $426,505 annually, or $29.28 per square foot (using the lease's stated 14,564 square feet of space). The tenant (Rite Aid) is responsible for all real estate taxes, repair and maintenance of the parking facilities, utilities, and insurance. H.R., Ex. B. In essence, the lease presented by MK Menlo is a net lease.

As the court has noted on several occasions, there are specific aspects of a lease that

must be considered in evaluating a leased fee sale: the lease rate, creditworthiness of the tenant, and the nature of expense reimbursements. See *Terraza 8*, supra, at ¶34; *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶10. The burden is on the opponent of the sale (here, MK Menlo) to prove that the terms of the lease rendered the sale not indicative of the fair market value of the fee simple estate. Here, even if we accept that the unauthenticated lease presented by MK Menlo was the lease in place at the time of the May 2014 sale, we find MK Menlo has failed to present any evidence that the lease terms were anything other than market. The only evidence MK Menlo has presented to rebut the sale is Mr. Sours' appraisal of the property. For the reasons that follow, we find such evidence fails to rebut the presumption that the sale of the property is the best evidence of value.

At the outset of our review of Mr. Sours' report, we note the BOE's objection to the date of his valuation being one year removed from tax lien date. However, because Mr. Sours testified that his opinion of value would remain unchanged if valuing the property as of January 1, 2014, we find no bar to our consideration of his report and testimony. See *AP Hotels of Ill., Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565. In his sales comparison approach, Mr. Sours relied on three comparable properties that sold between October 2012 and December 2013 for unadjusted prices of $120.06/SF to $208.33/SF. He made numerous adjustments to arrive at an adjusted range of $144.97/SF to $156.25/SF. We note his gross adjustments to sale comparable 3 were 85%, to sale comparable 1 were 55%, and to sale comparable 2 were 30%. We find the large adjustments made to comparables 1 and 3 render them inapplicable to the subject property. It is unclear why Mr. Sours relied on such dissimilar properties; he gave no indication that it was difficult to find sales of properties comparable to

the subject property. Given the large adjustments made and his choice of comparables, we question his opinion of the subject property at $150/SF, or $2,220,000 total.

We likewise find Mr. Sours' income capitalization approach of little utility. Although he opined the subject property would be leased on a semi-gross basis, with the tenant paying utilities, reserves, and a management fee, and the landlord paying real estate taxes, all of his five lease comparables were listed/leased on a net basis. And, indeed, a review of the lease presented by MK Menlo reveals that the subject property is leased on a net basis. It is therefore difficult for this board to weigh Mr. Sours' appraisal opinion against the sale price, as the comparison is not apples to apples. Further, we don't find Mr. Sours' lease comparables to be truly comparable to the subject. Lease comparable #1 is a listing for two proposed 6,000 square foot retail buildings, compared to the subject as a single-tenant, 14,000-square-foot building. Lease comparable #2 also appears to be a listing for a multi-tenant building, as the information within Mr. Sours' report indicates the "suite size" is 7,500 square feet with a "minimum suite size" of 1,500 square feet. Similarly, lease comparable #3 is for an outlot of an existing store with a minimum suite size of 1,600 square feet. Of his actual lease rates, lease comparable #4 is for a 4,685 square foot space, and lease comparable #5 is for a 6,213 square foot space. The differences between Mr. Sours' lease comparables and the subject lead us to question the reliability of his income approach. Moreover, he provides no market data to support his 8% vacancy rate, nor to support his 3% management fee and 3% reserve for replacement. Given the numerous deficiencies in his analysis, we find Mr. Sours' income approach is not probative of value, and does not rebut the presumption accorded the May 2014 sale.

In accordance with the court's instructions on remand, we have fully considered Mr. Sours' appraisal report and testimony and do not find his opinion of value or his opinion of

market rent probative of the value of the subject property as of January 1, 2014. We further find that, in the absence of any other evidence, MK Menlo has failed to rebut the presumption that the May 2014 sale for $5,330,000 is the best evidence of the subject property's value.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2014, were as follows:

TRUE VALUE

$5,330,000

TAXABLE VALUE

$1,865,500

OHIO BOARD OF TAX APPEALS

BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. GREENE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1314 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

1400 GRANGE HALL, LLC AND ROLIN INVESTMENTS #1, LLC
1400 GRANGE HALL ROAD
BEAVERCREEK, OH 45430

Entered Monday, August 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Beavercreek City Schools Board of Education ("BOE") appeals from a decision of the Greene County Board of Revision ("BOR") valuing the subject property at $1,800,000 for tax year 2017. This board held an evidentiary hearing, but only the BOE appeared. We now decide this appeal on the notice of appeal, the statutory transcript ("S.T."), and this board's hearing record.

[2] The auditor valued the subject at $1,400,740 for tax year 2017. The BOE filed an increase complaint with an opinion of value at $2,100,000 per an October 2017 sale. In support, the BOE presented the conveyance fee statement and general warranty deed, which indicate appellee 1400 Grange Hall LLC ("Grange") purchased the subject for $2,100,000 in October 2017 and no portion of the sale price was attributable to non-realty.

[3] Grange made two primary arguments at the BOR hearing. First, Grange argued the sale was not arm's-length because Grange was not a willing buyer. S.T., Ex. E at 49-50. While the facts are somewhat unclear, several years before the sale at issue, a rehabilitation clinic company attempted to buy the subject property. Grange owned property located adjacent to the subject property. Grange's owners stated there was public outcry because local owners did not want the clinic to operate in the area. Grange's owners testified another similar clinic had generated criminal activity. Grange's owners also implied the anticipated clientele of the clinic would present a risk to Grange's employees. Accordingly, Grange (and other community members) fought against a zoning change needed to transform the subject into a rehabilitation clinic. Id. at 54. The potential buyer eventually abandoned the zoning change and withdrew its offer to purchase the subject property. Again, all of this happened years before the sale at issue. According to Grange, it purchased the subject property to avoid a similar situation in the future. Grange's owners testified they approached the seller, negotiated a price, then closed. S.T. at 57.

[4] Second, Grange argued the sale was not arm's-length because the sale was seller-financed. Grange's owners testified they approached the seller about purchasing the property and negotiated a price. Id. at 53, 57 ("We made an offer that was significantly lower, closer to the value that our realtor suggested."). The seller was willing to proceed with a seller-financed transaction. Id. at 57. Grange informally talked with a bank but never formally

approached the bank because "it was going to be a long process of getting approval." Grange's owners did not recall what interest rate the seller offered. However, Grange's owners did note they are in the process of refinancing with a traditional lender but did not have the lender's financing appraisal on hand at the BOR hearing.

[5] In response, the BOE argued, "the fact that there's a mere business reason [f]or purchasing property that does not take it out of the real of an arms-length sale nor does it indicate duress." Id. at 52-53. The BOR adopted a value of $1,800,000 "based on seller financing not being considered a standard sales transaction." The BOR also stated it rejected the sale price due to "the description of how the sale price was established, basing the sales price on the payments and not what the property would sell for in a cash transaction." The BOE appealed to this board.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[7] A recent, arm's-length sale constitutes the best evidence of a property's value.

Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The Ohio Supreme Court has explained that a party seeking to adopt a sale value can satisfy their initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show *** that no evidence controverts the *** arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to the opposing parties, who may rebut the presumption by showing the sale was not arm's-length. Id. Here, the BOE presented a facially valid sale with the conveyance fee statement and deed. Accordingly, the burden shifted to Grange to rebut the presumption that the sale price is the best indication of value.

[8] While Grange did not participate in our proceeding, Grange did appear at the BOR hearing where it made two arguments. First, it argued the subject was purchased under duress. Second, Grange argued the sale was not arm's-length because it was seller-financed. We reject both arguments for the following reasons.

[9] First, the record does not credibly show Grange was under economic duress to purchase the property. Even assuming that the possibility the clinic would purchase the property could create economic duress, there is no evidence in the record the clinic or any other undesired purchaser wanted to purchase the property at the time Grange purchased it. There is no evidence the seller would have sold to such a purchaser. More fundamentally, all willing buyers have a

motive to acquire property, but a motive does not amount to economic duress absent specific and "compelling business circumstances." *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 28, 2019), BTA No. 2017-1960, unreported. Economic duress occurs when a buyer like Grange is forced to purchase a property and "never had any real choice." *Kroger Limited Partnership I v. Hamilton Cty Bd. of Revision* (Sept. 13, 2018), BTA No. 2016-2353, unreported. For example, economic duress is present when a party must purchase property or suffer "sure corporate death" or where "no alternative" exists. Id. See also *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996). Here, there was no such duress. There was no indication the clinic intended to obtain title to the subject. There is no credible evidence Grange had to purchase the subject or suffer "corporate death," or that Grange was compelled to purchase the subject against its will.

[10] We likewise reject Grange's second argument about seller financing. The Ohio Supreme Court has been clear seller financing alone "is insufficient to show that a sale price does not reflect a property's value." *Perkins v. Cuyahoga Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2017-2267, unreported. More is needed to show the sale should be disregarded. For example, a seller-financed transaction might be disregarded because of significantly favorable financing. But, to prove such financing, a party would need to present tangible evidence about the specific terms of the seller financing, market data to establish traditional lenders offered less favorable terms, or other similar evidence. Here, Grange's witnesses provided very little detail about the basic terms of the seller financing. They also testified they did not seriously consider or inquire into terms offered by market lenders. Without that information, we cannot conclude the seller financing was so favorable that this board should disregard the sale.

[11] Accordingly, we order the subject valued in accordance with the sale for tax year 2017 as follows:

PARCEL NUMBER B42-0002-0013-0-0070-00

TRUE VALUE

$2,100,000

TAXABLE VALUE

$735,000

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1256, 2018-1260 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

CHARLES WICKS AND WICKS REALTY LLC
Represented by:
BEN RITTERSPACH
BYAS LAW OFFICE, LTD.
399 VENTURE DRIVE
UNIT D
LEWIS CENTER, OH 43035

Entered Monday, August 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] In these two consolidated cases, the Columbus City Schools Board of Education ("BOE") appeals from two decisions of the Franklin County Board of Revision ("BOR") for tax year 2017. There are a total of six parcels at issue, all improved with rental homes. We decide the case on the notices of appeal, the statutory transcripts, and the parties' written arguments. On March 18, 2019, this board barred appellees Charles Wicks and Wicks Realty LLC

(collectively "Wicks") from submitting new evidence as a sanction for failure to comply with this board's discovery order.

[2] Before discussing each parcel specifically, we restate the law governing our review. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[3] Wicks' brief relies on exhibits and facts outside the record. When new evidence is not properly submitted at a hearing before this board, our review is confined to the statutory transcript certified by the auditor pursuant to R.C. 5717.01. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); see also Ohio Adm. Code 5717-1-15 (this board's rule stating new evidence must be submitted at a hearing). Moreover, this board expressly barred Wicks from introducing new evidence in our March 18, 2019 sanctions order. Accordingly, those documents are not properly before us and this board will not consider those documents or facts to the extent they are not included in the transcript.

[4] A recent, arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm 's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92,2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v.Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

[5] In the absence of a qualifying sale, expert or non-expert appraisal evidence is required. The evidence must be credible, probative, and competent evidence of value as of the tax-lien date. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. Raw sales and/or auditor's valuation data does not typically meet that standard. With nothing more than a list of raw data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal

of Real Estate (13th Ed.2008). Moreover, the auditor is entitled to a presumption of regularity when assessing property. *AERC Saw Mill Village v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468. The Ohio Supreme Court has, therefore, held that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996).

[6] A reduction is also not generally warranted based solely on the allegation that the property suffers from negative characteristics like defects. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick,* supra,at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation."*Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No 102649, 2015-Ohio-4385, at ¶7).

[7] Mr. Wicks is a real estate salesperson who testified his values were based on market data he analyzed using his expertise. However, as this board has noted, a salesperson is not an appraiser. See *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018),BTA No. 2017-2014, unreported. As we have noted before, "real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience." Id. (quoting The Appraisal of Real Estate (13th Ed.2008)). We have also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Moreover, Mr. Wicks had personal knowledge of almost none of the comparable sales he offered. That means the market information is largely unreliable hearsay. The Ohio Supreme Court has held that "the

owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19. Additionally, while an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported.

[8] Finally, the BOR reduced the value of five of the parcels using a gross rent multiplier. Again, we "eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki*, supra. We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina*, supra. It is unclear from the record before us,however, what formula the BOR used or where the BOR obtained the necessary data to create the gross rent multiplier. While gross rents would be probative to an income approach appraisal, additional information would be necessary. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 1997-A-175, unreported. This board has rejected the untailored gross rent multiplier method of valuation and has been affirmed in doing so. See *Independence School Dist. Bd. of Edn.. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845. Gross rent multipliers are only reliable in specific circumstances and generally require application by an appraiser. Id. at ¶ 17. In *Edgewood Manor of Westerville, Inc. v. Franklin Cty. Bd. of Revision* unreported, we stated: (Sept. 8, 2006), BTA No. 2004-T-706,

> Appraisers who attempt to derive and apply gross income multipliers for valuation purposes must be careful for several reasons. First, the properties analyzed must be comparable to the subject property and one another regarding physical, locational, and investment characteristics. Properties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes. The Appraisal of Real Estate, at 546. The Appraisal of Real Estate further cautions that income multipliers should not be used to determine value under the market data approach because comparable prices are not adjusted on the basis of differences in net operating income per unit

because rents and sale prices tend to move in relative tandem.

We see no evidence in the record that the BOR controlled for all those variables nor are we able to determine where the BOR obtained the data to create its gross income multiplier. Accordingly, in the cases below where we cannot replicate the calculation, we reinstate the auditor's value per Ohio Supreme Court mandate. See *Sapina*, supra.

1327 Carolyn (010-082473-00)

[9] The county auditor valued this property at $64,700 for tax year 2017. Wicks filed a decrease complaint with an opinion of value of $42,500 citing untailored market data. There were sales of the subject property in 2015 and 2016, but Wicks conceded at hearing those sales were distressed. The parcel card has limited information on the sales but does appear to indicate the sales were distressed. See *Taliki Investments*, supra (sheriff sales are presumed distressed); *Bd. of Edn. of the South-Western City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2014-2259, unreported (HUD sales are presumed distressed). Moreover, Wicks testified substantial improvements were made after the sale. Turning to Wicks' market data, we are unable to find the evidence is competent evidence of value because it is not adjusted to the subject property. Wicks argued he arrived at his value based on his experience as a salesperson and market data. However, the record contains no credible evidence to support his value.

[10] Turning to the BOR's adjusted value of $49,000, this board is required to reject the adjustment if unsupported by competent and probative evidence. The BOR utilized a gross rent multiplier but the record is unclear on the specific methodology employed by the BOR. Moreover, the record is unclear how and where the BOR obtained its data. See *Gallick*, supra. Accordingly, this board does not find the BOR's reduction is supported by the evidence and sees no reason to deviate from the auditor's initial value as follows:

PARCEL NUMBER 010-082473-00

TRUE VALUE

$64,700

TAXABLE VALUE

$22,650

1113 E. Piedmont (010-052988-00)

[11] The county auditor valued this property at $63,500 for tax year 2017. Wicks filed a decrease complaint with an opinion of value of $60,300 citing market data. The most recent sale occurred in 2013, and no party argues that sale is recent or competent evidence of value. Turning to Wicks' market data, we are unable to find the evidence is competent evidence of value because it is not adjusted to the subject. Wicks argued he arrived at his value based on his experience as a salesperson and market data. However, the record contains no credible evidence to support his value. The BOR likewise rejected Wicks' evidence and retained the auditor's value. Having independently reviewed the record as we are required to do, we see no reason to deviate from the auditor's value as retained by the BOR. See *Taliki*, supra. We order the property valued as follows for tax year

2017: PARCEL NUMBER 010-052988-00

TRUE VALUE

$63,500

TAXABLE VALUE

$22,230

1077 E. Piedmont (010-082994-00)

[12] The county auditor valued this property at $79,000 for tax year 2017. Wicks filed a decrease complaint with an opinion of value of $48,600 citing market data. The parcel card

references a 2015 distressed sale, but no party advocates for that value. Moreover, Wicks testified post-sale improvements were made, which decreases the utility of the sale. Wicks argued he arrived at his value based on his experience as a salesperson and market data. However, the record contains no credible evidence to support his value.

[13] Turning to the BOR's adjusted value of $48,000, this board is required to reject the adjustment if unsupported by competent and probative evidence. The BOR utilized a gross rent multiplier but the record is unclear on the specific methodology employed by the BOR. Moreover, the record is unclear how and where the BOR obtained its data. See *Gallick*, supra.

[14] Accordingly, this board does not find the BOR's reduction is supported by the evidence and sees no reason to deviate from the auditor's initial value as follows:

PARCEL NUMBER 010-082994-00

TRUE VALUE

$79,000

TAXABLE VALUE

$27,650

799 Wainwright (010-096033-00)

[15] The county auditor valued this property at $60,600 for tax year 2017. Wicks filed a decrease complaint with an opinion of value of $58,900 citing market data. The parcel card lists no recent sales. Wicks argued he arrived at his value based on his experience as a salesperson and market data. However, the record contains no credible evidence to support his value.

[16] Turning to the BOR adjustment, this board is required to reject the adjustment if unsupported by competent and probative evidence. The BOR utilized a gross rent multiplier but the record is unclear on the specific methodology employed by the BOR. Moreover, the record is unclear how and where the BOR obtained its data. See *Gallick*, supra. Accordingly, this board

does not find the BOR's reduction is supported by the evidence and sees no reason to deviate from the auditor's initial value as follows:

PARCEL NUMBER 010-096033-00

TRUE VALUE

$60,600

TAXABLE VALUE

$21,210

1038 E. Dunedin (010-083026-00)

[17] The county auditor valued this property at $71,700 for tax year 2017. Wicks filed a decrease complaint with an opinion of value of $41,700 citing untailored market data. No recent sales are listed on the parcel card, and no party relies on a sale. Turning to Wicks' market data, we are unable to find the evidence is competent evidence of value because it is not adjusted to the subject. Wicks argued he arrived at his value based on his experience as a salesperson and market data. However, the record contains no credible evidence to support his value.

[18] Turning to the BOR's adjusted value of $65,000, this board is required to reject the adjustment if unsupported by competent and probative evidence. The BOR utilized a gross rent multiplier but the record is unclear on the specific methodology employed by the BOR. Moreover, the record is unclear how and where the BOR obtained its data. See *Gallick*, supra. Accordingly, this board does not find the BOR's reduction is supported by the evidence and sees no reason to deviate from the auditor's initial value as follows:

PARCEL NUMBER 010-083026-00

TRUE VALUE

$71,700

TAXABLE VALUE

$25,100

1701 Marshylyn (010-144354-00)

[19] The county auditor valued this property at $221,700 for tax year 2017. Wicks filed a decrease complaint with an opinion of value of $161,500 citing untailored market data. Wicks purchased this subject in 2010; so, there are no recent sales of the property. Turning to Wicks' market data, we are unable to find the evidence is competent evidence of value because it is not adjusted to the subject. Wicks argued he arrived at his value based on his experience as a salesperson and market data. However, the record contains no credible evidence to support his value.

[20] Turning to the BOR's adjusted value of $187,000, this board is required to reject the adjustment if unsupported by competent and probative evidence. The BOR utilized a gross rent multiplier but the record is unclear on the specific methodology employed by the BOR. Moreover, the record is unclear how and where the BOR obtained its data. See *Gallick*, supra. Accordingly, this board does not find the BOR's reduction is supported by the evidence and sees no reason to deviate from the auditor's initial value as follows:

PARCEL NUMBER 010-144354-00

TRUE VALUE

$221,700

TAXABLE VALUE

$77,600

OHIO BOARD OF TAX APPEALS

MAPLE PARK COURTS LLC, (et. al.),

Appellant(s),

CASE NO(S). 2018-1028

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MAPLE PARK COURTS LLC
Represented by:
VICTOR ANSELMO, ESQ
SIEGEL JENNINGS CO., L.P.A.
23425 COMMERCE PARK DRIVE, SUITE 103
CLEVELAND, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, August 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Maple Park Courts LLC ("Maple") appeals a decision from the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of the subject at $38,400 for tax year 2017. The parties briefed the issues. We now decide the case on the notice of appeal, the statutory transcript, and the parties' briefs.

[2] The fiscal officer valued the subject at $38,400 for tax year 2017. Maple filed a decrease complaint with an opinion of value of $2,000 citing negative characteristics and a February 2015 sale for $2,000. Maple supplied the deed and conveyance fee statement, which make clear the subject sold for $2,000 in February 2015. Maple provided an agreement showing

the sellers entered into a management agreement with Grimaldi Properties Management ("Grimaldi") in 2013. Grimaldi is an affiliate of Maple, and the parties negotiated an option purchase price of $2,000 when the management agreement was signed. Maple called the option in 2015. The BOR rejected the sale finding as follows:

> Board finds evidence not probative of the requested value. Board finds existing relationship between buyer and seller as evidenced by the management agreement with option to purchase. No witness testimony to explain the same. Boards review of sales in the market area and counsels acknowledgement on the record that this was a below market sale supports the fiscal officer's value. Failure to meet burden. No change.

[3] On appeal, Maple argues the BOR errored in rejecting the sale. The BOR argues the sale was not arm's-length because of a preexisting business relationship between buyer and seller and because the sale did not occur on the open market.

[4] The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7.

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza8, LLC v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. With regard to an option contract,

recency is determined by the sale date – not the date the option is negotiated. See *Belich v. Lake Cty. Bd. of Revision* (Sept. 27, 2017), BTA No. 2016-1123, unreported. The Ohio Supreme Court has further explained that a taxpayer asking a BOR to adopt a sale value can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing the sale was not arm's-length. Here, Maple presented a facially valid and recent sale with the conveyance fee statement and deed, which shifts the burden to any opposing party.

[6] The BOR makes several arguments in rebuttal. We group them for clarity. First, the BOR argues the sale should be disregarded because there is no evidence of an open market listing. Second, the BOR argues the sale was not arm's-length because of a preexisting relationship between buyer and seller. Third, the BOR argues there is no evidence the subject did not substantially change in character between the sale date and the tax-lien date. For the following reasons, this board does not find the sale presumption has been rebutted.

[7] First, the Ohio Supreme Court has been clear a sale does not cease to be arm's-length simply because it did not occur on a traditional, open market. *Kauffman Vine LLC v. Hamilton Cty. Bd. of Revision* (Apr. 2, 2019), BTA No. 2018-1650, unreported (citing *N. Royalton City Schs. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092)). In *North Royalton*, the court held "the case law does not condition the character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range

of potential buyers." Id. Second, the record does not establish a preexisting relationship sufficient for this board to reject the sale. Per the deed and conveyance fee statement, the sellers were four natural persons. The sellers entered into the "residential property management agreement with option to purchase" with Grimaldi. The sale price was negotiated in that agreement, and we find no credible evidence of a preexisting business relationship between sellers and Grimaldi or sellers and Maple. Finally, we find no credible evidence the subject changed in character between the sale date and tax-lien date; if the subject had changed substantially, the BOR had the burden of proving how the subject changed. We also disagree with the BOR's decision finding Maple's counsel admitted the sale was below market value. This board finds that line was taken out of context.

[8] For these reasons, we find the sale has not been rebutted and order the subject valued as follows for tax year 2017:

PARCEL NUMBER 782-09-129

TRUE VALUE

$2,000

TAXABLE VALUE

$700

OHIO BOARD OF TAX APPEALS

CLARENCE CHADWICK BENANZER III, (et. al.), Appellant(s), vs. DARKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-778 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLARENCE CHADWICK BENANZER III
Represented by:
CLARENCE BENANZER
530 E. 4TH ST.
GREENVILLE, OH 45331

For the Appellee(s) - DARKE COUNTY BOARD OF REVISION
Represented by:
R. KELLY ORMSBY, III
PROSECUTING ATTORNEY
DARKE COUNTY
504 SOUTH BROADWAY
GREENVILLE, OH 45331

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The county appellees attached to their motion the affidavit of the county auditor, asserting that appellant's notice of appeal was not filed with the Darke County Board of Revision. Upon consideration of the record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this

matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

TAMIKO HAYNES, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-704
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - TAMIKO HAYNES
1954 KRUMROY RD.
AKRON, OH 44312

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
MARRETT HANNA
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The county appellees attached to their motion the affidavit of the executive assistant to the BOR, asserting that appellant's notice of appeal was not filed with the Summit County Board of Revision. Upon consideration of the record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SERGEY AND RITA SAMOREZOV, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-558 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SERGEY AND RITA SAMOREZOV
Represented by:
RITA SAMOREZOV
5814 HIGHLAND RD
HIGHLAND HTS, OH 44143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARIA T. AVILA, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-504
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MARIA T. AVILA
Represented by:
MARIA RODRIGUEZ
6010 VELMA AVE
PARMA, OH 44129

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the

provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

RMH HOLDINGS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-439
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RMH HOLDINGS LLC
Represented by:
DONALD VARGO
18324 RIDGE RD
N. ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellant's notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Appellant has provided no documentation to demonstrate that the appeal was filed with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed. Accordingly, appellant's request for a new

hearing date is denied as moot.

OHIO BOARD OF TAX APPEALS

WANDA P. ELLISON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-870
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - WANDA P. ELLISON
OWNER
1049 DANA AVENUE
CINCINNATI, OH 45229

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was filed late with this board, and it was not filed at all with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the

provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of the appeal was filed with this board sixty-five days after the mailing of the BOR's decision, and there is no record of such filing with the BOR. The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notice of appeal was not filed with the Hamilton County Board of Revision. Upon consideration of the record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GLENN J. WILLETT, TRUST, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-758 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GLENN J. WILLETT, TRUST
OWNER
2101 PINEBROOK RD
COLUMBUS , OH 43220

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon a notice of appeal from a decision of the Franklin County Board of Revision ("BOR"), the record certified pursuant to R.C. 5717.01, and the county appellees' motion to dismiss, to which appellant has not replied.

Appellant initially filed a complaint against the valuation of parcel number 070-010862 for tax year 2018 requesting a decrease from the auditor's initial value of $368,100 to $325,800. As the county appellees recount in their motion, the complaint was referred to a telephone mediation and a verbal agreement was reached. The agreement was memorialized in a Stipulation of Facts and Waiver, which was ultimately accepted by the BOR and resulted in a decrease in the value of property to $341,800 for tax year 2018. Despite having waived his right

to appeal, appellant filed a notice of appeal with this board seeking a credit from the county for "over-payments" for the prior tax year, stating:

> My objective is to get a dollar credit for the "last three 1/2 year payments" I've made at the higher reappraisal rate (ie just the difference amount between the new and the old rate). (1/2 year was $3,665.96 vs new at $4,131.76).

The county appellees argue in their motion that what appellant seeks pertains to the value of the parcel for tax year 2017, over which neither the BOR nor this board have jurisdiction. The county also argues that the appeal is improper because appellant waived its right to appeal.

We agree with the BOR that this board's jurisdiction is limited to the value of the subject parcel for tax year 2018 only. R.C. 5715.19 authorizes the filing of complaints against the valuation of real property related "to the *current* year's assessment, not complaints that address a determination that relates to a *prior* year's assessment." *Sheldon Road Assoc., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 131 Ohio St.3d 201, 2012-Ohio-581, ¶20.Appellant filed the complaint on March 25, 2019; accordingly, it could only pertain to tax year 2018. R.C. 5715.19(A) (complaint against value shall be filed before March 31 of the ensuing tax year). Upon review of the notice of appeal, we agree that appellant seeks relief for tax year 2017, over which neither this board nor the BOR has jurisdiction.

As to the only issue as to which this board has jurisdiction on appeal, i.e., the value of the subject parcel for tax year 2018, we find no justiciable issue. It appears appellant agreed to the value adopted by the BOR and does not assert any different opinion of value on appeal. See *Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA Nos. 2002-T-1271, et al., unreported.

Based upon the foregoing, the county appellees' motion is well taken. We hereby

dismiss this matter for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

ANDREW AND ERIN ROSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-443 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANDREW AND ERIN ROSS
Represented by:
ERIN ROSS
36830 BROADSTONE DRIVE
SOLON, OH 44139

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LORETTA M. CARZONE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-424
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LORETTA M. CARZONE
OWNER
2915 LAMPLIGHT LANE
WILLOUGHBY, OH 44094

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Lake County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellant's notice of appeal.

The appellant filed a notice of appeal with this board; however the documentation attached to appellant's notice of appeal does not constitute a BOR decision. The chief deputy of real estate for the Lake County Auditor's Office and Board of Revision certified that a complaint was not filed by the appellant with the BOR. Upon consideration of the existing

record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is,

dismissed.

OHIO BOARD OF TAX APPEALS

MARSHALL LAUREL M & THOMAS & LYNN MARSHALL CO-TRS, (et. al.),	)	CASE NO(S). 2019-865, 2019-866, 2019-867, 2019-868, 2019-869, 2019-871, 2019-872, 2019-873, 2019-874, 2019-875, 2019-876, 2019-877, 2019-878, 2019-879, 2019-880, 2019-881, 2019-882, 2019-884, 2019-885, 2019-888, 2019-889, 2019-890, 2019-891, 2019-892, 2019-893
Appellant(s),	)	
vs.	)	
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
Appellee(s).	)	(REAL PROPERTY TAX)
		DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARSHALL LAUREL M & THOMAS & LYNN MARSHALL CO-TRS, ET AL.
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. These matters are decided upon the motion, appellants' notices of appeal, the statutory transcripts certified by the county board of revision ("BOR"), and appellants' response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of*

Revision, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The records do not demonstrate that appellants filed such notices with the BOR. Although appellants replied that the notices of appeal were mailed via the U.S. postal service, appellants did not provide documentation to demonstrate that the appeals were timely filed with the BOR. As the Supreme Court noted in *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, ¶10 (quoting *United States v. Lombardo*, 241 U.S. 73, 76 (1916)) "[a] paper is filed when it is delivered to the proper official and by him received and filed." See also *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶21. In the absence of proof that the notices of appeal appellants allegedly mailed were actually received by the BOR, we find their arguments unavailing.

Upon consideration of the existing records, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

DAVID A RAPP, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-799
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DAVID A RAPP
Represented by:
DAVID RAPP
DAVID RAPP SERVICES
5553 HUMMINGBIRD COURT
GENEVA, OH 44041

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR

provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2017-2157
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

EAST 55TH STREET II LLC
2700 EAST 55TH STREET
CLEVELAND, OH 44104

Entered Tuesday, August 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Cleveland Municipal Schools Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's valuation of the subject property for tax year 2016. This board held a hearing, but only the BOE attended that hearing. We decide this case on the notice of appeal, the statutory transcript ("S.T.") certified by the fiscal officer, this board's hearing record, and the BOE's exhibits.

The subject property, four parcels, is improved with a warehouse owned by appellee East 55th Street II LLC ("East"). The fiscal officer valued the subject property at a combined value of $1,123,000 for tax year 2016. The BOE argues the subject sold on July 6, 2016 via entity transfer, i.e., a sale of membership in East. The BOE filed an increase complaint with an opinion of value at $3,185,000 alleging that was the entity transfer price.

Before addressing the facts in detail, we review our cases on point. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

The "best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977); see also *Terraza 8 LLC v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. A recent, arm's-length "creates a rebuttable presumption that the sale price reflected true value" as of the tax-lien date. *Terraza 8*, supra, at ¶ 33. A facially valid sale is best presented with a deed, conveyance fee statement, and purchase contract. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of* Revision (July 25, 2018), BTA No. 2016-2365, unreported ("*Palmer House*") (citing *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932, ¶ 28). In cases where this board has found a transfer of interest in the ownership entity was actually a sale of real property, this board has relied on purchase agreements and other contracts of the parties. If those documents make clear no other going concern value or assets were owned by the newly-formed entity, this board has

been willing to recognize that transfer as a sale for real property valuation purposes. See *Akron City Schools. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported; see also *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-127, unreported ("*30050 Chagrin*") (aff'd 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634). However, this board has not considered the sale of membership interest to be a real property sale when the record lacks specific evidence of the transaction, which make clear the newly formed entity's sole purpose was to facilitate the transfer of real property only. See *Beachwood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2017-871, unreported. Importantly, a party must present evidence that the entity transfer was not a transfer of non-realty. See id.

Returning to the facts of this case, the BOE argues the subject property was owned by the Gelb family for operation as the Ohio Farmers Foodservice building. At some point, operations ceased, and the building became vacant. S.T., Ex. E. The property is adjacent to a lot formerly owned by the city of Cleveland. A company called Hillcrest Food Service ("Hillcrest") operated a nearby warehouse but was looking to move to a larger space. The subject property was dropped into East on July 6, 2016. The deeds show the ownership was transferred from Gelb Investments LLC and Eliot Gelb Realty LLC to East. However, the record is devoid of evidence about whether East owned any assets prior to the transfer of the subject property. Neither testimony nor tangible evidence was presented on that point. We also note the record lacks credible evidence to explain the relationship between Hillcrest, the owner of the adjacent property (HEC Properties), and East. The BOR rejected the BOE's argument finding lack of sufficient evidence that a sale of real property occurred. The BOE appealed to this board. Neither East nor Hillcrest participated at the BOR or before this board.

As discussed above, when "the record clearly indicates that the transfer of membership interest [in an LLC] was done solely to transfer title to the subject property, this board has found that such a transaction constitutes the sale of the underlying real property for real property valuation purposes." *30050 Chagrin*, supra. However, in this case, there is no credible evidence that the sale of membership in East was solely a sale of real property. The facts are similar to cases wherein we have held that no "sale" of real property occurred. Moreover, the record lacks credible evidence (such as testimony by an owner), that the transfer was only for the sale of real property. See *30050 Chagrin*, supra. The record lacks also lacks financial documents for East or an appraisal of the subject, which could be used to assist in confirming the transfer price was at market. Because the BOE has not met its burden, we see no reason to deviate from the auditor's values as retained by the BOR.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

PARCEL NUMBER 123-08-004

TRUE VALUE

$973,600

TAXABLE VALUE

$340,760

PARCEL NUMBER 123-09-003

TRUE VALUE

$133,900

TAXABLE VALUE

$46,870

PARCEL NUMBER 123-09-117

TRUE VALUE

$8,200

TAXABLE VALUE

$2,870

PARCEL NUMBER 123-09-078

TRUE VALUE

$7,300

TAXABLE VALUE

$2,560

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-883
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, August 21, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellant's notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Although appellant replied that the notice of appeal was timely mailed via the U.S. postal service, appellant did not provide documentation to demonstrate that the appeal was ever received by the BOR. As the Supreme Court noted in *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, ¶10 (quoting *United States v. Lombardo*, 241 U.S. 73, 76 (1916)) "[a] paper is filed when it is delivered to the proper official and by him received and filed." See also *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶21. Appellant has presented no evidence to demonstrate that notice of the appeal was received by the BOR.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HILLWOOD II HOLDINGS LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-1469 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HILLWOOD II HOLDINGS LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
TIMOTHY J. WALSH
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, August 21, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Property owner Hillwood II Holdings LLC ("Hillwood") appeals from a decision of the Summit County Board of Revision ("BOR") valuing the subject property for tax year 2017. The parties waived their appearances at this board's hearing. We now decide the on the notice of appeal, the transcript certified by the fiscal officer ("S.T."), and the parties' written argument.

This case involves an apartment complex that provides affordable housing to residents in

exchange for low-income housing tax credits ("LIHTC"). The issue in this case is a legal one, and the basic facts are not in dispute. The fiscal officer valued the subject property, three parcels, at $5,413,030 for tax year 2017. The appellee Akron City School District Board of Education ("BOE") filed an increase complaint with an opinion of value of $8,500,000 per an April 2017 sale. The BOE supplied the conveyance fee statement, which indicates no portion of the sale was attributable to non-realty. The BOE also supplied the deed, and the parcel card confirms the necessary details of the sale. Hillwood does not dispute the basic facts of the sale. See Hillwood Br. at 1. Instead, Hillwood argued (and argues) the sale is not evidence of value because the LIHTC land restrictions constitute an encumbrance for purposes of R.C. 5713.03. Therefore, the sale should be disregarded. The BOE disagrees, and the BOR ultimately adopted the sale price.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7).

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision* , 47 Ohio St.3d 23, 25 (1989). A sale that postdates tax-lien date creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The Ohio Supreme Court has also explained that a party seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

The Ohio Supreme Court has further been clear real property is to be valued for tax purposes both uniformly and in accordance with R.C. Chapter 5713. *Terraza 8*, supra, at ¶ 8. In turn, R.C. 5713.03 states:

> The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner.

(Emphasis added.) Hillwood argues the LIHTC restrictions are encumbrances and the sale should be disregarded.

Tellingly, Hillwood cites not a single case from this board, a reviewing court, or the Ohio Supreme Court in support of its position. This board's cases, and Ohio Supreme Court cases, do not support Hillwood's argument. Ultimately, this board does not find Hillwood's argument persuasive for four reasons. First, this board has found sales of property restricted by low-income housing agreements to be arm's-length transactions that create a rebuttable presumption of value. Second, LIHTC restrictions are police power restrictions for purposes of R.C. 5713.03. Third, the record is devoid of rebuttal evidence to show Hillwood's argument is factually correct, i.e., that the sale price does not reflect true value. See *Terraza 8*, supra, at ¶ 31. Fourth, while most of our cases have relied on income approach appraisals, this board's

many LIHTC cases recognize a sales comparison approach using LIHTC comparables is legally permissible. Such an approach would be foreclosed if Hillwood was correct. We address each rationale in turn.

First, this board has found an arm's-length sale of a subject property creates a rebuttable presumption of value despite the low-income housing restrictions. See, e.g., *Shaker Place VOA Affordable Housing v. Cuyahoga Cty. Bd. of Revision* (Apr. 30, 2014), BTA No. 2012-599, unreported; *Bd of Edn. of the Stow Munroe Falls School Dist. v. Summit Cty. Bd. of Revision* (Feb. 21, 2013), BTA No. 2010-Y-3126, unreported. This board has rejected Hillwood's argument in numerous cases. See *Eastland Manor Apartments LLC v. Franklin Cty. Bd. of Revision* (May 3, 2017), BTA No. 2016-537, unreported; *Kingsbury Tower I v. Cuyahoga Cty. Bd. of Revision* (Dec. 8, 2016), BTA No. 2016-52, unreported (acknowledging that LIHTC sales can create a presumption of value but rejecting sale due to lack of evidence). Indeed, the first step in valuing a LIHTC property is to determine if a recent, arm's-length sale has occurred. See *Moler/Van Buren Development v. Montgomery Cty. Bd. of Revision* (Apr. 17, 2018), BTA No. 2015-2236, unreported. Accordingly, this board finds Hillwood's argument directly contradicts this board's cases on point.

Second, LIHTC restrictions are police power regulations for purposes of R.C. 5713.03. That statute requires real property to be valued as a "fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions." LIHTC restrictions are an "effect" of "police powers or *** other governmental actions." Our reading of the statute is confirmed by *Cummins*, supra; *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762; and *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2. Cummins is important because

the Ohio Supreme Court expressly built on *Cummins* in *Woda Ivy* and its progeny. The *Cummins* property owner disavowed a sale price arguing the land was subject to a real covenant restricting the property to one type of use. *Cummins*, supra, at ¶ 14. The Ohio Supreme Court rejected that argument holding "that the sale price was indicative of value." *Woda Ivy*, supra, at ¶ 19. The *Woda Ivy* court used *Cummins* as the "polestar in applying" its precedent to LIHTC cases. Id. at ¶¶ 20-21. The *Woda Ivy* court ultimately concluded LIHTC restrictions must be considered in valuation because LIHTC restrictions are "'police power' limitations." Id. at ¶ 23. The court also noted its decisions were consistent with the decisions of sister courts. Id. at ¶ 25. Accordingly, this board interprets LIHTC restrictions to be police power restrictions.

Third, the *Terraza 8* court expressly recognized that a sale could be rebutted with affirmative evidence of value showing the sale price did not represent value. Here, Hillwood presented no evidence, appraisal or otherwise. See *Akron City Schools Bd. of Edn. v. Summit Cty. Bd. of Revision* (Jan. 2, 2019), BTA No. 2017-1714, unreported.

Fourth, the natural conclusion of Hillwood's argument is that the sale of a LIHTC property can never be the best evidence of value because of the LIHTC restrictions. That proposition is inconsistent with this board's cases that have considered the sales comparison and income capitalization approach with LIHTC comparables. See, e.g., *Cincinnati City Schools Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Sept. 13, 2016), BTA No. 2015-1993, unreported; *Buckeye Community Twenty One LP v. Muskingum Cty. Bd. of Revision* (July 1, 2016), BTA No. 2015-1742, unreported (approving an appraisal wherein the appraiser developed a capitalization rate using sales of LIHTC properties); *Gables at Countryside Lane II v. Harrison Cty. Bd. of Revision* (Apr. 18, 2016), BTA No. 2015-647, unreported (same); *Frontier Run v. Van Wert County Board of Revision* (Apr. 4, 2016), BTA No. 2015-838, unreported (same);

Apple Glen Limited Partnership v. Van Wert Limited Partnership (Apr. 4, 2016), BTA No. 2015-839, unreported (same); *Spirit Master Funding IX LLC v. Cuyahoga Cty. Bd. of Revision* (June 8, 2018), BTA No. 2017-73, unreported.

For these reasons, we find Hillwood has not carried its burden and find the sale is the best evidence of value. For tax year 2017, we order the properties to be valued as follows:

PARCEL NUMBER 67-01238

TRUE VALUE: $3,000,000

TAXABLE VALUE: $1,050,000

PARCEL NUMBER 67-56081

TRUE VALUE: $2,500,000

TAXABLE VALUE: $875,000

PARCEL NUMBER 67-62681

TRUE VALUE: $3,000,000

TAXABLE VALUE: $1,050,000

OHIO BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1135 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LOWE'S HOME CENTERS, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Wednesday, August 21, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This appeal comes before this board upon a notice of appeal filed by property owner Lowe's Home Centers, LLC ("Lowe's") from a decision of the Lorain County Board of Revision ("BOR") determining the value of parcel number 05-00-001-000-215 for tax year 2016. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the auditor, the record of the hearing before this board, the record of the hearing before this board in BTA No. 2017-1023, and the parties' written arguments.

The subject property is operated as a Lowe's retail store and was built in 2008. For tax year 2016, the Lorain County Auditor valued the property at $9,000,000. Lowe's filed a

complaint seeking a decrease in value to $5,331,840; however, it presented no evidence in support of such value and waived its appearance at the BOR's hearing. The BOR issued a decision finding no change in value was warranted, and Lowe's appealed to this board.

On appeal, Lowe's presented the appraisal report and testimony of Richard G. Racek, Jr., MAI, who opined the value of the property as of January 1, 2016 was $4,880,000. In response, the county appellees presented the appraisal report and testimony of Thomas D. Sprout, MAI, who opined the value was $9,800,000. Mr. Sprout also provided appraisal review testimony of Mr. Racek's appraisal report. Because similar testimony and evidence was presented in an unrelated case, BTA No. 2017-1023, the parties agreed to incorporate the record from this board's hearing in that matter.

This board has already issued its decision in BTA No. 2017-1023, and finds the arguments and evidence presented in this case are substantially similar. For the reasons stated in *Lowe's Home Centers, LLC v. Lorain Cty. Bd. of Revision* (Aug. 12, 2019), BTA No. 2017-1023, unreported, we reject Lowe's argument that valuation of the fee simple as if unencumbered interest *requires* that an appraiser use *only* vacant comparable sales. We likewise acknowledge that the appraisal evidence in this matter is substantially similar to that presented in BTA No. 2017-1023. As we did in that case, we find Mr. Racek's income approach the best evidence of value, as explained below.

Mr. Racek's opinion of value is based primarily on his sales comparison approach to value. As indicated above, because Lowe's position is that the fee simple as if unencumbered value can only be determined using the sales of vacant properties, Mr. Racek focused on vacant properties in his sales comparison analysis. He selected eight sales (the same as those selected in BTA No. 2017-1023), and determined the subject property would sell, vacant, for $35/SF, or

$4,880,000 total. The county appellees argue that Mr. Racek's selection of sale comparables is contrary to the subject being located in a commercially vibrant area on tax lien date, noting that several of the comparables are either vacant (comparable number 1 vacant for at least 8 years) or have a different use (i.e., comparable number 2 used as a motor vehicle dealership, and comparable 8 used as a storage facility), are attached to shopping centers or malls (comparables 2, 4, and 7), or are subject to deed restrictions for which Mr. Racek made no adjustment (comparables 3 and 6). As we did in BTA No. 2017-1023, we agree with the county's concerns with the comparability of the properties Mr. Racek used in his sales comparison approach and therefore find his conclusion thereunder to be less probative.

Mr. Racek also provided an income capitalization analysis. Looking, again, at the same comparable leases he utilized in BTA No. 2017-1023, Mr. Racek determined the subject property could generate $4/SF triple net in rent on tax lien date. He further determined a vacancy and collection loss rate of 5% would be reasonable, deducted 3% for management and administrative costs, deducted $0.50/SF for reserves, and determined a net operating income for the subject property on a market basis at $444,026. He determined a 9% capitalization rate was appropriate, based on comparable sales, and arrived at a final value under the income approach of $4,930,000. He reconciled both approaches to $4,880,000. The county appellees argue Mr. Racek's lease comparables were smaller, older, involved multi-tenant properties, and/or were inactive leases, and therefore not indicative of the subject's value on tax lien date. They also faulted his use of multi-tenant property sales in his capitalization rate analysis.

Mr. Sprout's analysis was likewise similar to his analysis in BTA No. 2017-1023, and Lowe's cites the same faults in this appraisal. He gave equal weight to his sales comparison and income approaches to value. Like Mr. Racek, Mr. Sprout used the same sale comparables in

appraising this Lowe's property and the same adjustment process. As we indicated in our decision in BTA No. 2017-1023, we find Mr. Sprout's adjustment for property rights for his leased fee sales insufficient. We also note Mr. Sprout acknowledged that he would not have relied on sale comparable 2 once he became aware it was the sale of a ground lease. His remaining fee simple sales (comparables 4 and 5) sold for unadjusted prices of $36.38/SF and $38.95/SF, respectively. We find Mr. Sprout's conclusion under his sales comparison approach of $70/SF for the subject property is not supported by such comparables.

We again find Mr. Sprout's income capitalization analysis insufficient, and note that he relies on actual Lowe's leases which were renegotiated recent to tax lien date. As in BTA No. 2017-1023, we reject the notion, absent market data in support, that leases that are renegotiated temporally recent to the relevant tax lien date are per se at market terms. Considering Mr. Sprout's remaining two lease comparables and Mr. Racek's lease comparables, we find Mr. Racek's estimate of market rent at $4/SF is better supported. Both appraisers estimated vacancy and collection loss at 5%. Upon review of both appraisers' expense analyses, we find Mr. Racek's expenses more appropriate, including his 3% management fee and $0.50/SF reserve. We further find support for his capitalization rate from data within both reports. Overall, we find Mr. Racek's opinion of value under his income approach to value is the most indicative of the subject property's value on tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$4,930,000

TAXABLE VALUE

$1,725,500

Although we acknowledge that Lowe's also provided arguments involving the Equal Protection Clause and Uniformity Clause, we make no findings in relation thereto.

OHIO BOARD OF TAX APPEALS

SELECT MEDICAL PROPERTY VENTURES, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-172, 2018-228 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SELECT MEDICAL PROPERTY VENTURES, LLC
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, August 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant Select Medical Property Ventures LLC ("Select") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the subject property, three parcels, at $23,000,000 for tax year 2016. The appellee school board requested a hearing but then waived

its appearance at this board's hearing. We now decide the case on the notices of appeal, the transcript certified by the fiscal officer, this board's hearing record, and Select's exhibits. The school board requested a briefing schedule but did not file a brief.

The subject properties are three lots improved with a skilled nursing facility. The facility sold as part of a bulk sale of multiple facilities between Select and various affiliates of Kindred Hospitals Limited Partnership ("Kindred") as a going concern. In essence, Kindred and Select swapped nursing homes. The sale occurred on June 6, 2016, and the parties do not dispute the sale price for this facility was $22,965,000. The fiscal officer valued the property at $17,000,000 for tax year 2016, and the school board filed an increase complaint asking the BOR to adopt the sale price. Select argued the transfer price included non-realty, and it filed a counter complaint with an opinion of value at $17,000,000. The school board relied on the conveyance fee statement, which allegedly stated no portion of the purchase price was attributable to non-realty. While it does not appear the BOR included the statement in the transcript, it discussed the document in its decision addressing Select's motion for reconsideration. At the BOR hearing, Select offered the appraisal of Richard Racek, MAI. Mr. Racek opined a value of $16,750,000; he valued only the real property in his appraisal.

Select also provided the purchase agreement arguing the sale included "personal property, business and operating licenses, records and contracts, along with numerous other non-realty or intangible assets." Article II of the agreement is clear the transfer includes the following: "all furniture, fixtures, furnishings, machinery, tooling, vehicles, materials, equipment (including medical equipment), office equipment, computing and telecommunications equipment and other tangible personal property." The agreement also contemplated the transfer of advertising materials, promotional materials, customer lists,

supplier lists, market surveys, books, ledgers, files, reports, employee records, business records, operating records, and a substantial amount of additional non-realty. Select relied heavily on *Terraza 8 L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The school board relied heavily on *Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 152 Ohio St.3d 182, 2017-Ohio-8819 and *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650. The BOR ultimately rejected the allocation argument claiming it found a lack of evidence to substantiate the claim that more than real property was included in the recorded sale price. It also held *Terraza 8*, supra, to be inapplicable because the sale was not of the leased fee interest. The BOR instead adopted the entire sale price (rounded to $23,000,000), and Select appealed to this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*,

136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8*, supra, at ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). A sale that post-dates the tax-lien date creates a rebuttal presumption of value in favor of the sale price. The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. A proponent bears a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with purchase documents and/or a conveyance fee statement. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. Once the proponent presents a facially valid sale, the burden shift to the opposing parties who may rebut by proving the sale was not arm's-length. Id.

One way to rebut is to show the sale price included the transfer of non-realty. *Cincinnati School Dist.*, supra. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property['s] value." Id. The Supreme Court has also held in some instances an appraisal can be used to show the value attributable to realty versus non-realty. Id. Very importantly, after the BOR rendered its decision but before this board's hearing, the Ohio Supreme Court decided *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d

41, 2018-Ohio-1611. In that case, the owner of a nursing home property argued the transfer was a bulk sale and included non-realty. In the nursing home context, the court was clear the "business value of a nursing home or congregate-care facility should be separated from" its real property value. Id. at ¶¶ 19-21. The court went on to reaffirm that an appraisal can be used to show the value attributable to realty versus non-realty. Id. at ¶¶ 22-23. We find *Arbors East* controlling and dispositive of this case. The facts of Arbors East are substantially similar, and we recite some of those similarities here. First, both sales were for the going concern of a nursing home. Both sales were bulk sales, which included non-realty. Neither cases included an itemized, contemporaneous allocation of non-realty including values agreed upon by the parties. Both nursing homes offered appraisal evidence to prove the value of the non-realty.

Here, Select's primary argument is allocation should be determined with Mr. Racek's appraisal. The school board has offered no evidence to the contrary. It did not offer its own appraisal or offer an expert who had reviewed Mr. Racek's appraisal. Having independently reviewed it, we find Mr. Racek's appraisal credible. We are unable to determine any substantial errors in the appraisal, which would limit the utility of his opinion of value. Mr. Racek developed a summary of the surrounding area and the local economy. Mr. Racek analyzed the senior living industry at a national and regional level. He examined the site and its improvements. Using Marshall & Swift, Mr. Racek developed a cost approach opinion of value at $15,900,000. He also developed a sales comparison approach using seven nursing home sales, which indicated a going concern value of $20,134,500. His real property value was

$16,894,500 (using the sales comparison approach). He also developed an income approach, which indicated a going concern value of $19,670,000. Using the income approach, his opinion of value was $16,430,000. Relying primarily on the sales comparison approach, his ultimate opinion of value was $16,750,000.

Accordingly, we order the subject valued as of January 1, 2016, in accordance with Mr. Racek's appraisal as follows:

PARCEL NUMBER 129-03-002

TRUE VALUE

$16,717,290

TAXABLE VALUE

$5,851,050

PARCEL NUMBER 129-05-015

TRUE VALUE

$14,390

TAXABLE VALUE

$5,040

PARCEL NUMBER 129-05-016

TRUE VALUE

$18,330

TAXABLE VALUE

$6,420

OHIO BOARD OF TAX APPEALS

JAMI ITIAVKASE & BEM ITIAVKASE, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-515 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMI ITIAVKASE & BEM ITIAVKASE
Represented by:
BEM ITIAVKASE
5960 SUNRIDGE DR.
CINCINNATI, OH 45224

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, August 27, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This appeal is now considered upon the county appellees' motion to dismiss this matter, which we will construe as a motion to affirm the decision issued by Hamilton County Board of Revision ("BOR"). Specifically, the county appellees argue the underlying complaint was the second complaint filed within the same three-year interim period consistent with R.C. 5715.19(A)(2). The appellants responded that the complaint complied with the requirements of R.C. 5715.19(A)(2). We decide the matter upon the motion, appellants' response to said motion, and statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01.

[2] The record discloses the following relevant facts. The property owner's spouse, Bem Itiavkase, filed a complaint with the BOR, which challenged the $68,290 initially assessed value of the subject property, parcel 237-0001-0213-00, for tax year 2018. At the BOR hearing on the matter, Itiavkase appeared in support of the complaint. (An employee from the county auditor's office also appeared to testify at the hearing.) There was much discussion about whether the BOR had jurisdiction to consider the complaint on various bases. However, the only relevant discussion involved whether the property owner had impermissibly filed multiple complaints within the same

triennial period, specifically whether consecutive complaints had been filed for tax years 2017 and 2018. Because the complaint alleged that the subject property had lost value because of a casualty, on line 14 of the complaint, the BOR members provided the property owner's husband an opportunity to demonstrate that the subject property's value had decreased, as the result of such event, between the tax lien date of January 1, 2017 (for the tax year 2017 complaint) and tax lien date of January 1, 2018 (for the tax year 2018 complaint). Itiavkase testified that a crack developed in the home's foundation, which resulted in flooding inside the home, within the prior six months and that the home's roof was damaged as a result of high winds. He submitted an estimate to repair the roof in support of his testimony. The BOR voted, 2 to 1, to dismiss the complaint for lack of jurisdiction and subsequently issued a written decision to that effect. This appeal ensued. Because our jurisdiction is derivative, the only issue before us is the propriety of the BOR's dismissal.

[3] R.C. 5715.19(A)(2) expressly limits the number of times a complainant may file a complaint within an applicable three-year period but allows multiple filings under certain circumstances. See *Soyka Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, 79 Ohio App.3d 781 (1992). See, also, *Hamilton Manor Partners v. Brown*, 12th Dist. Butler No. CA93-04-080 (Sept. 27, 1993). "A second complaint within an interim period must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2)." *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998).

[4] In this matter, the applicable interim period in Hamilton County is 2017, 2018, and 2019; the first of these years having been the one in which the sexennial update was completed. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. In support of the motion, the county

appellees direct our attention to BTA No. 2018-410, which involved the property owner's appeal of the BOR's decision to retain the subject property's initially assessed value for tax year 2017. See *Itiavkase v. Hamilton Cty. Bd. of Revision* (Nov. 9, 2018), BTA No. 2018-410, unreported (appeal dismissed for failing to file a copy of the notice of appeal with the BOR as required by R.C. 5717.01). In response, the appellants argue that the complaint asserted one of the enumerated exceptions under R.C. 5715.19(A)(2) and that Itavaske submitted sufficient evidence to prove said exception. We agree that the tax year 2018 complaint *did* indicate that at least one of the permitted exceptions described in R.C. 5715.19(A)(2), the subject property lost value because of a casualty, as justification for the filing of a second complaint in the same interim period. This board has previously held that a casualty "must include an identifiable event" that occurred between the tax lien date of the earlier year and year currently under consideration. See *Overstreet v. Hamilton Cty. Bd. of Revision* (Jan. 19, 2010), BTA No. 2008-M-2025, unreported, at 4. See also *Price v. Lucas Cty. Bd. of Revision* (June 30, 1994), BTA No. 1993-T-987, unreported. We disagree, however, that Itiavkase provided sufficient evidence to prove that a casualty occurred. He failed to submit independent and specific corroborating evidence to demonstrate that "an identifiable event" occurred, which caused damage to the home's foundation and/or roof. As a result, we must agree with the BOR and conclude that the property owner failed to satisfy the hurdle of R.C. 5715.19(A)(2).

[5] Based upon the foregoing, we affirm the BOR's decision to dismiss the underlying complaint. As a result, this board lacks jurisdiction to consider the merits of this appeal.

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1109 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

55 FURNACE STREET LLC
388 S. MAIN STREET
SUITE 401-A
AKRON, OH 44311

Entered Tuesday, August 27, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's value of the subject property, two parcels, for tax year 2017. The BOE requested a hearing with this board but then waived its appearance at that hearing. No party filed written argument. We decide the appeal on the notice of appeal and the transcript certified by the fiscal officer.

The fiscal officer valued the subject, a warehouse, at a combined value of $116,090 for tax year 2017. The BOE filed an increase complaint requesting a value of $275,000 per a December 20, 2017 sale. The BOE supplied the conveyance fee statement showing appellee 55 Furnace Street LLC ("Furnace") purchased the subject on December 20, 2017 for $275,000. The statement indicates no portion of the purchase price was attributable to non-realty. The BOE also presented the deed, which confirms the sale occurred in December 2017. The parcel record card likewise confirms the sale date and price. Furnace did not appear at the BOR hearing or otherwise participate in the BOR proceeding. In a split decision, the BOR affirmed the auditor's value. One member of the BOR dissented arguing the sale price should be adopted. The remaining members stated they found lack of sufficient evidence to verify the details of the sale.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. A sale that post-dates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the

***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this case, the BOE met its initial burden of proving a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to create presumption). Those documents confirm Furnace purchased the property in December 2017 for $275,000. Accordingly, the burden shifts to any opponent of the sale price to rebut. However, no party has submitted evidence in rebuttal or even participated in this proceeding or the BOR proceeding. Accordingly, we find the presumption created by the sale has not been rebutted.

Per *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2005-Ohio-1921, it is the decision and order of this board that for tax year 2017, the properties shall be assessed in accordance with the following values:

PARCEL NUMBER 67-56405

TRUE VALUE

$269,220

TAXABLE VALUE

$94,230

PARCEL NUMBER 68-53052
TRUE VALUE

$5,780

TAXABLE VALUE

$2,020

OHIO BOARD OF TAX APPEALS

KIMBERLY S. PETTIT, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1618
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - KIMBERLY S. PETTIT
OWNER
328 TUSHER ST
MOAB, UT 84532

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, August 27, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner Kimberly Pettit appeals from a decision of the Hamilton County Board of Revision ("BOR") affirming the auditor's valuation of the subject property for tax year 2017. We now decide the case on the notice of appeal, the transcript certified by the auditor, and any written argument.

[2] The auditor valued the subject, a single-family residence, at $245,350 for tax year 2017. Ms. Pettit filed a decrease complaint requesting a value of $219,540. In support, Ms. Pettit supplied many documents including a narrative, a stipulation of value for tax year 2010, a tax year 2012 BOR decision, tax bills for 2012 through 2016, and photographs of the property. Ms. Pettit argued at the BOR hearing that the value should be decreased because of negative

characteristics and because of prior reductions granted by either the auditor or the BOR. She also claimed there were issues with the parcel record card. Auditor's appraiser Susan Spoon testified the reduction was not justified. She noted a nearby comparable recently sold for $590,000. She also testified that the parcel card was correct, and seemed to imply Ms. Pettit was misinterpreting the square footage figure indicated on the parcel card. The BOR ultimately upheld the auditor's value, and Ms. Pettit appealed to this board. Although a hearing was initially requested, the parties jointly moved to cancel the hearing and submit the appeal on the record established below.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013),BTA No. 2012-L-2291, unreported.

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the

passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct30, 2017),. BTA No. 2016-405, unreported. Here, the parcel card shows the property was transferred via $0 transfers six times from 1950 to 2010. Ms. Pettit also testified the subject has belonged to her family for many years. It does not appear there are any recent, arm's-length sales, and no party asks us to adopt any sale.

[6] Ms. Pettit makes three primary arguments. First, she alleges the home is in poor condition, and the poor condition justifies the reduction. Second, she contends the subject should be valued as it was valued in 2010 because the auditor stipulated to such value and no changes have been made. Third, she alleges there are defects on the parcel record card meaning the auditor's value is suspect. We address each in turn.

[7] We are unable to find an adjustment is warranted based upon the alleged property defects. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra, at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶ 7). Here, the impact those characteristics could have on value is not self-evident. Ms. Pettit did not have the subject appraised and provided no credible evidence of how the defects affect value. To be sure, an owner is entitled to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). While an owner might be an expert in the subject, an owner is not necessarily an expert in valuation or the market. The Supreme Court has also held "there is no requirement that the finder of fact accept [the

owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996).

[8] Second, it is well settled each tax year stands on its own. *Olmsted Falls Bd. of Edn. v.Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, ¶ 16; *Trebmal v Cuyahoga Cty. Bd. of Revision* (Nov 24, 1993), BTA No. 1991-M-269, unreported. Ms. Pettitargues the subject should be valued per the 2010 stipulation for the 2017 tax year. This board has been clear "the fact that value has been modified in another year is not competent and probative evidence that a different year's value should be changed." *Columbus City School Bd.of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 4, 2019), BTA No. 2018-253, unreported; *Massillon City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Nov. 29, 2017), BTA No. 2016-1926, unreported. Equally important, the auditor was under a duty to reappraise the property in 2011 and 2017. He was also under an obligation to update his values in 2014. See *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Mar. 6, 2018), BTA No. 2017-476, unreported. The auditor performed his statutory duty and appraised the subject at $245,350. Because the auditor's revaluation of the subject property fell within the auditor's ordinary duties of office, the presumption of regularity applies and the auditor is presumed tohave done it properly. *Louisville City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Jan. 2, 2019), BTA No. 2017-1028, unreported.

[9] Third, we find no credible evidence the record card is fundamentally flawed in a way that would call into question the auditor's value. Ms. Spoon testified Ms. Pettit was misinterpreting the parcel card. More importantly, Ms. Pettit failed to provide credible evidence of the actual square footage she believes is appropriate. She also did not take the next step of showing how that change would affect value. See *EOP-BP Tower*, supra.

[10] Having disposed of the evidence in support of the adjustment, we order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER 521-0003-0006-00

TRUE VALUE

$245,350

TAXABLE VALUE

$85,870

OHIO BOARD OF TAX APPEALS

SHELBY HERSH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1129
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - SHELBY HERSH
Represented by:
STEVEN R. GILL
SLEGGS, DANZINGER & GILL CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, August 27, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Property owner Shelby Hersh appeals from a decision of the Cuyahoga County Board of Revision ("BOR") affirming the fiscal officer's valuation of the subject property at $83,000 for tax year 2017. We now decide the case on the notice of appeal, the fiscal officer's statutory transcript, and the parties' written argument.

[2] The fiscal officer valued the subject property, a single-family residence, at $83,000 for tax year 2017, and appellant filed a decrease complaint requesting a value of $70,400 per a March 2017 sale. In support, appellant supplied the settlement statement, which confirms a sale in March 2017 for $70,400. The seller was the Secretary of Housing and Urban Development or "HUD." The settlement statement confirms the parties were represented by salespersons who

were paid commissions. Appellant also supplied the conveyance fee statement and deed. Appellant argued to the BOR that the parties acted in their own pecuniary interest. The BOR found as follows:

> "Sale referenced in support of value was a HUD sale and not considered arm's length. No other evidence was provided to show the sale price was indicative of value. BOR research indicates current market value is supported by the market. No change."

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that post-dates tax-lien date creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶19. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of*

Revision, 47 Ohio St.3d 23, 25 (1989). The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show *** that no evidence controverts the *** arm's-length character of the sale.'" *Lunn*, supra,at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. *Lunn*, supra,at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that it was not arm's-length. Id. HUD sales are presumed not to be arm's-length. *IRA Lady v. Lorain Cty. Bd. of Revision* (June 22, 2017), BTA No. 2016-876, unreported. However, that presumption is rebuttable. See, e.g., *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431. Appellant argues the facts of this case are substantially similar to the facts of the Ohio Supreme Court's *Schwartz* decison, wherein the court found the property owner had rebutted the presumption. See Appellant's Br. at 2-3. This board disagrees. The *Schwartz* property was on the market for three years. Appellant does not claim this property was on the market for any ignificant period. While salespersons were involved in this sale, there is no conclusive evidence the property was openly and systematically marketed, as was the case in *Schwartz*. See Id. at ¶¶ 28-31. Appellant also failed to provide market data to show no higher price could be obtained, which the *Schwartz* property owner did provide. Id. at ¶ 30. While it is true, as appellant argues, that the sale price was not far from the fiscal officer's value, such a fact is irrelevant to the question of whether appellant has rebutted the presumption that HUD sales are generally not arm's-length.

Accordingly, we order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER 712-23-100

TRUE VALUE

$83,000

TAXABLE VALUE

OHIO BOARD OF TAX APPEALS

NORDONIA HILLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2018-1252
vs.	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NORDONIA HILLS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
MARRETT HANNA
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

TODD WHEELER
OWNER
3460 WEST BAY CIRCLE
LEWIS CENTER, OH 43035

Entered Wednesday, August 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Board of Education for the Nordonia Hills City School District ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's valuation of the three subject parcels for tax year 2017. We decide the case on the notice of appeal and the transcript certified by the fiscal officer ("S.T.").

The fiscal officer valued the subject parcels at a combined $275,000 for tax year 2017,

and the BOE filed an increase complaint requesting a combined value of $310,000 per a November 2017 sale. In support, the BOE supplied the conveyance fee statement, which confirms a sale price of $310,000. The statement indicates no portion of the sale price was attributable to non-realty. The BOE also supplied the deed, and the sale is confirmed by the parcel card. The appellee property owner did not appear at the BOR hearing. With one member dissenting, the BOR refused to adopt the sale citing lack of sufficient evidence.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." *Terraza 8* at ¶ 33. A sale that post-dates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision,* 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their

initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this case, the BOE met its initial burden of proving a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to create presumption). Those documents confirm the property owner purchased the property in November 2017 for $310,000. Accordingly, the burden shifts to any opponent of the sale price to rebut. However, no party has submitted evidence in rebuttal or even participated in this proceeding or the BOR proceeding. Accordingly, we find the presumption created by the sale has not been rebutted.

It is the decision and order of this board that for tax year 2017, the properties shall be valued consistent with the November 2017 sale, as allocated among the parcels in accordance with *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2005-Ohio-1921, as follows:

PARCEL NUMBER 41-00103

TRUE VALUE

$35,130

TAXABLE VALUE

$12,300

PARCEL NUMBER 41-00104

TRUE VALUE

$33,050

TAXABLE VALUE

$11,570

PARCEL NUMBER 41-02046

TRUE VALUE

$241,820

TAXABLE VALUE

$84,640

OHIO BOARD OF TAX APPEALS

CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2018-1202
vs.	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
CHRISTIAN M. WILLIAMS
ATTORNEY AT LAW
PEPPLE & WAGGONER, LTD.
CROWN CENTRE BUILDING
5005 ROCKSIDE ROAD, SUITE 260
CLEVELAND, OH 44131-6808

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

RANDOLPH AND ELIZABETH BAJAJ
176 NORTH REVERE ROAD
AKRON, OH 44333

Entered Wednesday, August 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Cuyahoga Falls City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") valuing the subject property—two parcels—for tax year 2017. We now decide the case on the notice of appeal, transcript certified by the fiscal officer, and the BOE's written argument.

The two subject parcels are improved with apartment buildings. The fiscal officer valued the two at a combined $371,570 for tax year 2017. The BOE filed an increase complaint requesting a value of $537,500 citing a December 29, 2017 sale for that amount. The BOE supplied the conveyance fee statement, which indicates no portion of the purchase price was for non-realty. The BOE also supplied the deed. The parcel card also indicates the existence of the sale, the grantee, and the sale price. At the BOR hearing, the BOE relied solely on the sale, but the appellee property owners did not appear. With one member dissenting, the BOR rejected the sale finding "lack of sufficient evidence." The BOE appealed and filed written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish "competent and probative evidence" of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7).

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date creates a rebuttable presumption of value. See *Lone Star Steakhouse*

& Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The Ohio Supreme Court has explained that a party seeking to modify the value of a property based on a sale can satisfy its initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show *** that no evidence controverts the *** arm's-length character of the sale.'" Id. at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent can meet that burden with purchase documents and the conveyance fee statement. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once a proponent presents a facially valid sale, the burden shift to the opposing parties to rebut. Id.

Here, the sale occurred less than one year after tax-lien date, and there is no evidence the character of the subject changed between tax-lien date and the sale date. The BOE presented the conveyance fee statement and deed. Both documents match the parcel card data. As the BOE's brief correctly notes, the conveyance fee statement expressly states the sale was a fee simple sale of only real property. Accordingly, the BOE presented a facially valid sale, which shifts the burden to any party opposing the sale. Here, no party presented rebuttal evidence. The property owner neither participated at the BOR or before this board. We find no evidence to justify the BOR's decision to reject the sale. Accordingly, the presumption created by the sale has not been rebutted.

We order the property to be assessed in accordance with the following values for tax

year 2017:

PARCEL NUMBER 02-10826

TRUE VALUE

$491,530

TAXABLE VALUE

$172,040

PARCEL NUMBER 02-15556

TRUE VALUE

$45,970

TAXABLE VALUE

$16,090

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1108 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
MARRETT HANNA
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

SAHIB SINGH LLC
201 CARRIAGE BLVD.
PITTSBURGH, PA 15239

Entered Wednesday, August 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's value of the subject property for tax year 2017. The BOE requested a hearing with this board but then waived its appearance at that hearing. No party filed written argument. We decide the appeal on the notice of appeal and the transcript certified by the fiscal officer.

[2] The fiscal officer valued the subject property, retail space, at $165,000 for tax year 2017, and the BOE filed an increase complaint with an opinion of value of $230,000 per a sale on June

30, 2015. While the record is somewhat unclear, the BOR's speaking member and the property owner's representative argued the sale of the subject property had been litigated in at least one prior BOR case for a prior tax year. The representative argued a portion of the sale price was attributable to non-realty and that issue was resolved in the prior BOR case. The BOE relied on the conveyance fee statement and deed arguing the full sale price should be adopted as the subject property's value for tax year 2017. The conveyance fee statement shows the subject transferred for $230,000 and also indicates no portion of the sale price was attributable to non-realty. The BOR affirmed the fiscal officer's value finding a "lack of sufficient evidence" to justify the BOE's requested increase.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show *** that no evidence controvert[s] the *** arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

[4] In this case, the BOE presented a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to create presumption). Those documents confirm the property owner purchased the property in June 2015 for $230,000. The sale is presumed recent because it occurred within 24 months of tax-lien date. Accordingly, the burden shifts to any opponent of the sale price to rebut. However, no party has presented evidence to show the sale included personal property or to otherwise rebut the sale. The Ohio Supreme Court has been clear that "the party advocating for a reduction below the full sale price due to an allocation to other assets bears the burden of showing the propriety of such action and must provide 'corroborating indicia' of the appropriate allocation." *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property['s] value." *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶ 11. The Supreme Court has also held in some instances an appraisal can be used to show the value attributable to realty versus non-realty. Id. Here, we find the property owner has not carried its burden of proving what portion of the sale price, if any, was attributable to non-realty. The property owner submitted no tangible evidence in support of its claim. It provided no testamentary evidence of a person with knowledge of the sale negotiations. We find the testimony provided by the property owner's representative lacks "corroborating indicia" of reliability because no other tangible evidence was submitted in support. The only other evidence on the issue of allocation is the conveyance fee statement, which indicates no portion of the sale was only for real property. Moreover, we are unable to find collateral estoppel applies to this matter, even assuming the BOR did make findings of allocation during a prior proceeding. This board has held it cannot determine collateral estoppel applies when a party fails to provide the relevant record (including

evidence provided) from another administrative body. See *Ravenna School Dist. Bd. of Edn. v. Portage Cty. Bd. of Revision* (Jan. 18, 2019), BTA No. 2017-1497, unreported. Without that evidence, this board cannot determine how the BOR made its decision, what evidence the BOR considered, or whether the BOR's decision is supported by that evidence.

[5] Accordingly, we find the presumption created by the sale has not been rebutted. It is the decision and order of this board that for tax year 2017, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 68-05939

TRUE VALUE

$230,000

TAXABLE VALUE

$80,500

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1093 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

CATLETTE INVESTMENTS & PROPERTY LLC
2359 TRIPLETT BLVD.
AKRON, OH 44312

Entered Wednesday, August 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's value of the subject property, five parcels, for tax year 2017. The BOE requested a hearing with this board but then waived its appearance at that hearing. No party filed written argument. We decide the appeal on the notice of appeal and the transcript certified by the fiscal officer.

The fiscal officer valued the subject property at a combined $175,830 for tax year 2017.

The BOE filed an increase complaint requesting a combined value of $250,000 per a November 2017 sale. In support, the BOE supplied the conveyance fee statement, which indicates owner-appellee Catlette Investments & Property, LLC purchased the subject for $250,000 November 20, 2017. The statement also indicates no portion of the sale price was attributable to non-realty. The parcel card contains the sale data, and the BOE further supplied the deed. Only the school board attended the BOR hearing. With one member dissenting, the BOR rejected the sale price citing "lack of sufficient evidence." The BOE appealed to this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. A sale that post-dates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their

initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this case, the BOE met its initial burden by presenting a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision* , 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to create presumption). Those documents confirm Catlette purchased the property in November 2017 for $250,000. Accordingly, the burden shifts to any opponent of the sale price to rebut. However, no party has submitted evidence in rebuttal or even participated in this proceeding or the BOR proceeding. Accordingly, we find the presumption created by the sale has not been rebutted.

Per *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2005-Ohio-1921, it is the decision and order of this board that for tax year 2017, the properties shall be assessed in accordance with the following values:

PARCEL NUMBER 68-37214

TRUE VALUE

$1,010

TAXABLE VALUE

$350

PARCEL NUMBER 68-37215

TRUE VALUE

$220,610

TAXABLE VALUE

$77,210

PARCEL NUMBER 68-37216

TRUE VALUE

$1,650

TAXABLE VALUE

$580

PARCEL NUMBER 68-37218

TRUE VALUE

$20,060

TAXABLE VALUE

$7,020

PARCEL NUMBER 68-37224

TRUE VALUE

$6,670

TAXABLE VALUE

$2,330

OHIO BOARD OF TAX APPEALS

JOYCE A VASCEK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1071
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOYCE A VASCEK
Represented by:
JOYCE VASCEK
9819 FOXWOOD TR
KIRTLAND, OH 44094

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VICTOR GOZION, JR., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-976
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - VICTOR GOZION, JR.
OWNER
12911 SNOWVILLE ROAD
BRECKSVILLE, OH 44141

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter as having been untimely filed. R.C. 5717.01 provides that an appeal from a decision of a county board of revision ("BOR") may be taken by filing notice of the appeal with this board *and with the BOR* within thirty days of the mailing of the BOR's decision. Here, although the statutory transcript form certified by the Cuyahoga County Fiscal Officer indicates the Cuyahoga County Board of Revision's decision was mailed on June 7, 2019, the certified mailing receipts included in the transcript confirms that the decision was not mailed until June 10, 2019. Accordingly, notice of the appeal must have been filed with both this board and the BOR by July 10, 2019.

In his response, appellant notes this discrepancy in the dates for the mailing of the BOR's decision, and argues that he timely filed with this board on July 10, 2019. However, the

statutory transcript indicates appellant filed notice of the appeal with the Cuyahoga County Board of Revision on July 11, 2019, i.e., thirty-one days after the mailing of the BOR's decision. Appellant does not dispute such fact, nor has he provided any evidence to indicate the notice was filed within the thirty-day period.

The Supreme Court has held that compliance with the thirty-day filing deadline is mandatory and jurisdictional. *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Failure to file with both the BOR and this board within thirty days of the BOR's decision deprives this board of the authority to review the merits of the appeal. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) (The BTA "can review decisions only where the appeals have been filed in a timely manner."). The record before us in this matter indicates that appellant failed to timely file notice of the appeal with the Cuyahoga County Board of Revision. The county appellees' motion to dismiss is therefore well taken.

It is the order of this board that appellant has failed to properly invoke this board's jurisdiction. As such this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SHELDON REISMAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-836
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - SHELDON REISMAN
6793 EAST FARM ACRES DRIVE
CINCINNATI, OH 45237

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, notice of the appeal was filed with the BOR thirty-four days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BERT ENGEL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-772
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BERT ENGEL
OWNER
3066 KENSINGTON ROAD
CLEVELAND HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THOMAS E. SOLTIS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-717
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - THOMAS E. SOLTIS
OWNER
2450 W. SPRAGUE RD
PARMA, OH 44134

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellant's notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Appellant's response did not include documentation to demonstrate that the appeal was timely filed with the BOR. This board notes that docketing letters sent by the Board of Tax Appeals do not satisfy the requirement of R.C. 5717.01 that an appealing party file a notice of appeal with a county board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision,* 46 Ohio St.3d 192 (1989). See, also, *Rumora v. Ashtabula Cty. Bd. of Revision,* BTA No. 2000-G-970 (Mar. 30, 2001), unreported.

Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

GUY MAYORNICK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-658
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GUY MAYORNICK
1902 FREEMAN AVE.
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CARL E DUKICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-656
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - CARL E DUKICH
Represented by:
CARL DUKICH
3524 WALTON AVE.
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board or with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant filed the appeal with this board and with the BOR thirty-five days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JONATHAN SALEM, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-650
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JONATHAN SALEM
584 MARYGATE DRIVE
BAY VILLAGE, OH 44140

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BRAD STEIDL, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-524, 2019-526, 2019-527, 2019-528 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRAD STEIDL
FACILITIES MANAGER
CBRE
19601 MAPLEWOOD AVE.
CLEVELAND, OH 44135

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is

essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The records do not demonstrate that appellant filed such notices with the BOR. Upon consideration of the existing records, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider the instant matters. As such,

these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

WELLS BUILDING LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1635
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
ROSS COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - WELLS BUILDING LLC
Represented by:
BRIAN CLOSE
DINSMORE & SHOHL, LLP
191 WEST NATIONWIDE BOULEVARD, SUITE 300
COLUMBUS, OH 43215

For the Appellee(s) - ROSS COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

CHILLICOTHE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Wells Building LLC appeals from a decision of the Ross County Board of Revision ("BOR") valuing the subject property for tax year 2017. The parties, including the appellee school board, participated at this board's hearing. Accordingly, we decide this case on the notice of appeal, the statutory transcript, and this board's hearing record.

[2] Wells purchased the subject property—a concrete manufacturing facility—along with three other concrete manufacturing facilities as part of a bulk sale transaction. All four facilities

were formerly owned by a limited liability company called Hanson Aggregates Davon ("Davon"). The subject property is located in Ross County. The other three facilities are located in Clinton County, Pickaway County, and Fayette County. All four facilities were sold using the same purchase agreement, and that purchase agreement contained a negotiated allocation of real property, personal property, and inventory. In other words, the parties allocated a specific value to real property value of the subject property.

[3] Wells' owner testified that Wells discovered during negotiations that the subject property (again in Ross County) was subject to a preexisting right of first refusal in favor of a company called Ross-Co Redi Mix ("Ross-Co"). That right of first refusal agreement stated:

> If Basic [Davon] wishes to sell, assign, or otherwise transfer all or any part of its business, stock, or assets of the Chillicothe Operation of its division located at 1111 East Main Street, Chillicothe, Ohio, then Basic shall first offer to Ross-Co in writing, the opportunity to purchase said business, stock, or assets upon the same terms as Basic is willing to accept from a bona fide prospective transferee except that the closing of the purchase shall take place on the later of (a) the date for closing set forth in the terms of the agreement between Basic and the prospective transferee or (b) sixty (60) days after Ross-Co has notified Basic of Ross-Co's election to so purchase. Ross-Co shall have forty-five (45) days after receipt of Basic's offer (which shall include a copy of the prospective transferee's offer) in which to deliver to Basic a written acceptance of the offer on the terms stated therein. If Ross-Co shall not accept Basic's offer within such forty-five (45) day period, Basic shall be authorized to sell to the prospective transferee.

[4] As a result of that right of first refusal, Davon and Wells allocated $1,250,000 in real property to Chillicothe and $250,000 to the remaining properties. Accordingly, Wells filed a conveyance fee statement with the auditor indicating the purchase price was $1,250,000 and no portion of the sale price was attributable to non-realty. The conveyance fee statement was filed on January 23, 2018. The school board filed an increase complaint asking the subject be valued in accordance with the sale, and Wells filed a counter-complaint stating the value should be $929,070. The BOR valued the subject in accordance with the reported sale price, and Wells filed a notice of appeal with this board. No party submitted an appraisal.

[5] Wells must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7.

[6] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The Ohio Supreme Court has explained that the party presenting a sale price can satisfy their initial burden through the presentation of undisputed evidence of a sale, such as a conveyance fee statement. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Once the proponent presents a facially valid sale, the burden shift to any opposing party for rebuttal. Here, the school board presented the sale using the conveyance fee statement. Per *Lone Star*, our analysis begins there. The statement indicates Wells purchased the subject from Davon for $1,250,000 in January 2018. Accordingly, the school board presented a facially valid sale, which shifted the burden to any party opposing the sale.

[7] Wells argues the subject should not be valued in accordance with the conveyance fee statement for two related reasons. First, Wells argues the parties arbitrarily inflated the portion of the sale price allocated to the subject so Ross-Co would not exercise its right of first refusal. Second, Wells argues the value allocated to the subject was objectively disproportionate. Having reviewed the record, we disagree with Wells for the following reasons.

[8] First, Wells had the burden to demonstrate why the allocation does not reflect the parcel's true value but did not do so here. See *Akron City Schools Bd. of Edn. v. Summit County Board of Revision* (Jan. 2, 2019), BTA No. 2017-1714, unreported ("*Wendy's Properties*"). With a bulk sale, "the best evidence of the true value is the proper allocation of the lump-sum purchase price to individual parcels." (Internal quotation omitted.) Id. (quoting *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664). In *Wendy's Properties*, we noted that "[w]here an owner disputes the allocation of a bulk sale price to a particular property, the burden is on the owner to demonstrate why the allocation does not reflect the parcel's true value." Id. This board is required to look to "corroborating indicia" of reliability when determining if a record supports an allocation. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 1, 2014-Ohio-853. This board must look to the "best available evidence" to determine if the allocation is supported. Moreover, this board must board must pay special attention to the motivations of the parties and determine if an allocation is supported or unsupported by the facts in the record. For example, this board may consider an appraisal.

[9] Here, the BOR valued the subject in accordance with the allocation negotiated between Davon and Wells. Wells now disavows that allocation. While Wells is correct that this board has rejected the parties' allocation when the allocation is arbitrary and bears no rational relationship to actual real property values, we find the allocation in this case is not arbitrary. The allocation in this case was negotiated in order to dissuade the holder of the right of first refusal from exercising that option. In other words, sophisticated market participants negotiated a price they believed would be adequate to dissuade a competing claimant. That situation is markedly different from fact patterns where parties arbitrarily inflating or deflating allocation line-items primarily for tax purposes. See, e.g., *American Acquisitions Corp v. Hancock Cty. Bd. of Revision* (May 1, 2019), BTA No. 2018-524, unreported. As the school board correctly noted, simply because market participants have subjective motivation in an allocation does not make that allocation

arbitrary. All market actors have subjective motivations. Accordingly, we see no reason to disregard the allocation on that basis.

[10] Secondly, this board is unable to determine the allocation is disproportionate as a matter of fact. No party presented an appraisal in this case to show the subject property is not substantially more valuable than the other three properties. Importantly, Wells provides no evidence that a different allocation is appropriate. While an appraisal would be ideal, Wells could have bought in other evidence to support a different allocation.

[11] Third, as discussed by the school board during cross-examination, Wells has filed decrease complaints on the other properties based on this specific allocation. While we understand those actions may have been taken to hedge risk, the filing of the other complaints is at least one factor this board considers probative, even if minimally probative.

[12] Accordingly, we hold the subject property's true and taxable value as of January 1, 2017, was as follows:

PARCEL NUMBER 30-5454008.000

TRUE VALUE

$920,470

TAXABLE VALUE

$322,160

OHIO BOARD OF TAX APPEALS

ROLLING SHORES PROPERTIES LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-590, 2019-591, 2019-592 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROLLING SHORES PROPERTIES LLC
Represented by:
WILLIAM ANDREWS
PO BOX 771322
LAKEWOOD, OH 44107

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The records in these matters indicates that while appellant timely filed the appeals with this board, notices of the appeals were filed with the BOR thirty-four days after the mailing of the BOR's decisions. Upon consideration of the existing records, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1454 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

LONG & YOUNG STORAGE LLC
Represented by:
JESSICA L. DAVIS
BRENNAN MANNA & DIAMOND
250 CIVIC CENTER DRIVE
SUITE 300
COLUMBUS, OH 43215

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 010-001185-00, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject property, comprised of land and a partially complete self-storage facility ("facility") on the tax lien date, was initially assessed at $5,987,300. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $1,450,000 based upon the incomplete status of the improvement on the tax lien date. The BOE filed a countercomplaint, which objected to the request.

At the BOR hearing on the matter, both parties appeared through counsel. In its presentation, the property owner submitted the testimony of Joseph Beatty, an officer of an entity that co-owned the property owner, and George Harvey, a manager with the property owner who oversaw the construction of the facility. Beatty referred to the facility as a "special use" property, with limited use for another owner, because it was built on 10x10 grid and had high ceiling height. According to Harvey, on the tax lien date, the facility was "basically a shell of a structure" that lacked any mechanicals. Statutory Transcript ("S.T.") at BOR Hearing Audio. In support of the complaint, the property owner submitted a packet of documents, which included excerpts from a larger document (referred to as "RedTeam Performance Overview" for construction work completed between June 30, 2015 and June 30, 2016) to provide a "snapshot of what was occurring at the beginning of each month leading up to" the tax lien date, printed on June 28, 2017; photographs of the subject property that were taken throughout tax year 2015; excerpts from status reports from February 2016 to April 2016 and selected photographs of the ongoing construction for each month during that period; and rent rolls from May 2016 to December 2016. Id. The BOE cross-examined both Beatty and Harvey about their knowledge of the subject property as of the tax lien date and the cost to construct the facility up to that point. Beatty testified that he believed the facility to be less than 50% complete on tax lien date. Based upon the evidence presented, the property owner requested that the subject property's land be

valued consistent with the $1,000,000 price at which it transferred in March 2015, when it was a parking lot, and to value the facility based upon its level of completion on the tax lien date. Conversely, the BOE requested that the subject property's initial value be retained because the property owner failed to provide cost to construct the facility as of the tax lien date.

At the BOR decision hearing, the BOR members concluded that the facility was only 20% complete on the tax lien date. As a result, they voted to value the subject property's land consistent with the price at which it transferred in March 2015 ($1,000,000), and to value the partially complete self-storage facility at 20% of $7,263,100 (the "auditor's cost estimates as complete"), i.e., $1,361,800. S.T. at BOR Exhibit; BOR Decision Audio. The BOR subsequently issued a decision, which valued the subject property at $2,361,800, and this appeal ensued.

At this board's hearing, both parties appeared again through counsel. In its presentation, the BOE submitted the appraisal report and testimony of appraiser of Thomas D. Sprout, member of the Appraisal Institute. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion that the subject property should be valued at $5,400,000 as of January 1, 2016. Sprout testified that he believed that information available to him regarding the facility's construction costs indicated that the facility was between 65% and 76% complete on tax lien date. In support of Sprout's appraisal report and testimony, the BOE also submitted "Application And Certification For Payment" (referred to as "AIA" for "American Institute of Architects"), which provided the amount of the underlying construction loan, and payments made from such loan, and general descriptions of the work performed in exchange for those loan payments, and a copy of a financing appraisal report performed in contemplation of the underlying construction loan, which valued the subject

property in various states and at various periods. In its presentation, the property owner submitted additional testimony from Beatty who expanded upon or refined his prior testimony. He disputed Sprout's testimony about the facility's level of completion and testified that "it's more in the 30 percent range." Hearing Record ("H.R.") at 55. The property owner also submitted an updated copy of the "RedTeam Performance Overview" for construction work completed between January 1, 2016 and January 1, 2017, which also included total construction costs.

The parties submitted post-hearing briefs to more fully articulate their arguments. In its submissions, the BOE argued that the property owner failed to provide competent and probative evidence of the subject property's value before the BOR and before this board. Consequently, the BOE requested that the subject property's initially assessed value be reinstated or, alternatively, that the subject property be revalued consistent with Sprout's appraisal report and testimony. In its submissions, the property owner argued that Sprout's conclusion of value was unsupported because he erroneously concluded that the facility was more complete than it was on the tax lien date and because his conclusion of value, using the cost approach, impermissibly included soft costs. Instead, the property owner argued that this board should determine that the facility was 30% complete on the tax lien date. Consequently, the property owner requested this matter be remanded to the BOR to direct it to revalue the subject property consistent with the methodology referenced at the BOR decision hearing but modified to reflect that the facility was 30% complete on the tax lien date, or, alternatively, that the subject property be revalued at 30% of the estimated cost to construct the facility plus the cost to purchase the vacant land in March 2015, or that the subject property be revalued consistent with Sprout's appraisal report after deductions to reflect soft costs and/or entrepreneurial profit.

Before we consider the merits of this appeal, we must first dispose of three preliminary issues. First, the property record card suggests that there was a parcel combination in tax year 2016; however, there is no indication that such action took place on the tax lien date. As such, we do not find the parcel combination that may have taken place to be relevant to our analysis.

Second, at this board's hearing, the attorney examiner deferred ruling on an objection, lodged by the property owner, to the BOE's submission of a financing appraisal report performed to finance the construction of the facility. The property owner argued that the financing appraisal report was irrelevant because it was not performed for tax valuation purposes and that it was unreliable hearsay. The BOE responded that it was not offering the financing appraisal report for the truth of the matter asserted but because it was considered in Sprout's analysis. A review of the Sprout's testimony indicates that he relied upon the financing appraisal report to determine entrepreneurial profit and soft costs in his analysis. Because this matter does not fall within "the narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself ***[,]" the objection is now overruled. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*,
154 Ohio St.3d 449, 2018-Ohio-2046, at ¶38.

Third, we decline the property owner's invitation to remand this matter to the BOR. The case to which the property owner cites to supports its request is factually dissimilar from this matter and is irrelevant. See *Bexley City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 13, 2017), BTA No. 2017-1520 unreported at 2 ("[W]e find no reason to dispute the BOE's assertion that the difference between the BOR's verbal decision and its written decisions was an inadvertent typographical error. We therefore remand this matter to the Franklin County Board of Revision with instructions to issue a corrected decision ***."). Compare

South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, Slip Opinion No. 2018-Ohio-919 (determining that this board erred by remanding the case to the BOR after we determined that the property owner had failed to provide sufficient evidence of value and that the BOR had committed legal error in reaching value decision). The record contains sufficient information to allow this board to satisfy its independent duty to determine the subject property's value. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286, at ¶11 ("[T]he case law makes clear that the BTA has discretion to *** independently determine a value based on whatever evidence in the record the BTA finds to be the most probative.").

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn.. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

As an initial matter, we note that there are two issues that are not in dispute. First, the BOE and property owner agree that the facility was incomplete on the tax lien date. Second, they agree that the BOR's decision was based upon a misapprehension of the evidence submitted, which led to the BOR erroneously concluding that the facility was 20% complete on

the tax lien date. Our independent review of the record fails to indicate that the facility was 20% complete and, as such, we are unable to affirm the BOR's decision to value the subject property at $2,361,800.

We begin our analysis with the $1,000,000 sale of the subject property, in its prior iteration as a parking lot, in March 2015. Both the property owner and BOR relied upon such sale to determine the subject property's land value. However, the character of the subject property substantially changed between the sale and tax lien dates, i.e., from a parking lot to the partially complete facility. As a result, we do not find such sale to be reflective of the subject propert's land value. See *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328 ("*CarMax*").; *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473.

We are tasked with evaluating the property owner's evidence, i.e., testimony from the property owner's employees, who were familiar with the construction of the facility and state of the subject property on tax lien date, and "RedTeam" documents, which detailed the construction work performed on the facility in 2015 and 2016, against the BOE's evidence, i.e., the appraisal report and testimony of Sprout. We find that though the property owner presented sufficient evidence to demonstrate that the facility was incomplete on the tax lien date, such evidence lacked specificity that would allow this board to determine the facility's level of completion on the tax lien date. For example, at the BOR hearing, Harvey testified that the facility was "a shell" on tax lien date, yet Beatty testified that the facility was 50 percent or less complete on such date. We compare Beatty's testimony at the BOR with his testimony at this board's hearing, where he testified that the facility's level of completion of was "more in the 30

percent range." H.R. at 55. The record is devoid of exactly what "more in the 30 percent range" means. Id. Was the facility 29%, 35%, or 39% complete on tax lien date? We acknowledge that Harvey and Beatty were competent to testify about the facility's level of completion; however, we do not find their testimony to be probative on this issue. As a result of this inconsistency and lack of specificity, we cannot independently determine the facility's level of completion based upon the property owner's testimonial evidence.

We also do not find the "RedTeam" documents to be particularly helpful in our quest to independently determine the facility's level of completion. Such documents detail the work performed constructing the facility in portions of 2015 and 2016 and confirmed that the facility was incomplete on the tax lien date. However, the property owner failed to provide evidence that put the completed construction work in context. For example, the "RedTeam Performance Overview," printed on June 28, 2017 and presented at the BOR hearing, described the "structural framing" work that took place on October 22, 2015. Unfortunately, there was no evidence about how that work fit within the overall framework of constructing the facility. As a result, we do not find the Red Team documents probative on the issue of the facility's specific level of completion on the tax lien date.

We proceed to consider the sufficiency of Sprout's appraisal report, which solely developed a modified cost approach to valuing real property. He first surveyed the market to determine a vacant land value. In doing so, he compared the subject property's land features with the features of six vacant land sales that occurred in downtown Columbus between 2014 and 2017. After adjusting the comparable sales for differences with the subject property's land features, Sprout determined the subject property's land value to be $985,000. To that number, he added $4,411,792 to reflect the property owner's actual construction costs up to January 1,

2016. See H.R. at 15-16; Ex. B-Column D. He did not include soft costs (or indirect costs) or entrepreneurial profit in his analysis. He finally concluded the subject property's value to be $5,400,000 as of the tax lien date.

The property owner disputed Sprout's conclusion of value, claiming that he impermissibly included soft costs, i.e., "DB fee" and "DB contingency" as noted on the costs schedules, and entrepreneurial profit. We note, however, that The Appraisal of Real Estate (14th Ed.2013) at 563, 571-576, indicates that the classic cost approach to valuing real property should include soft costs and entrepreneurial profit. Here, Sprout testified that he developed a modified cost approach because he did not include those costs. Though Beatty disputed that assertion, we find Sprout's opinion and conclusion more competent and probative because he is an expert qualified to opine real property value for ad-valorem tax purposes. See also The Appraisal of Real Estate (14th Ed.2013) at 571 ("A construction contingency is not usually a soft cost but rather a hard cost."). Furthermore, we find that it was appropriate for Sprout to rely upon the facility's construction costs to develop the cost approach. See, *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio -1948, at ¶12 ("The cost method is appropriately applied when *** a building is a new structure not substantially depreciated. The Appraisal of Real Estate (12th Ed.2001) 354 ('Because cost and market value are usually more closely related when properties are new, the cost approach is important in estimating the market value of new or relatively new construction')."). Compare *CarMax*.

We note that this matter differs from the facts and circumstances in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543 ("*East Bank* "). There, the county auditor valued condominium units without considering their incomplete state. Here, notations on the property record card suggests that the county auditor's value

determination considered the facility to be 75% complete or less. Also, in *East Bank*, the record contained "evidence of completion percentages of the units," submitted by the property owner. Id. at ¶23. Here, no such evidence of the specific levels of completion was submitted by the property owner. Thus, the only competent and probative evidence of the completion percentage of the facility lies with Sprout's appraisal report and testimony.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the BOE satisfied the evidentiary burden on appeal by submitting Sprout's appraisal report and testimony. We also find that the property owner failed to submit competent and probative evidence to rebut the BOE's evidence. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2016:

PARCEL NUMBER 010-001185-00

TRUE VALUE

$5,400,000

TAXABLE VALUE

$1,890,000

OHIO BOARD OF TAX APPEALS

BEAVERCREEK TOWNE STATION LLC AND KOHL'S ILLINOIS, INC. (KOHL'S DEPARTMENT STORES, INC.), (et. al.),	)	CASE NO(S). 2015-1488
Appellant(s),	)	(REAL PROPERTY TAX)
vs.	)	DECISION AND ORDER
GREENE COUNTY BOARD OF REVISION, (et. al.),	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BEAVERCREEK TOWNE STATION LLC AND KOHL'S ILLINOIS, INC. (KOHL'S DEPARTMENT STORES, INC.)
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

BEAVERCREEK TOWNE STATION, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
ELIZABETH ELLIS
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
61 GREENE STREET
SUITE 200
XENIA, OH 45385

BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Thursday, August 29, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is again before this board following remand by the Ohio Supreme Court. By way of background, this matter was previously before this board as part of a group of consolidated cases that included the valuation of the property at issue in this matter (parcel number B42-0004-0002-0-0021-00), and several other parcels encompassing a shopping center (Beavercreek Towne Centre) for tax year 2014. Following this board's October 25, 2016 decision and order, an appeal was filed with the Ohio Supreme Court and this board's decision was ultimately vacated. *Beavercreek Towne Station, L.L.C. v. Greene Cty. Bd. of Revision*, 154 Ohio St.3d 274, 2018-Ohio-4300. After the court remanded the matter to this board for further consideration, the property owner, Beavercreek Towne Station, LLC, dismissed its appeals as to all parcels except for the parcel at issue in this matter – the Kohl's parcel. We therefore proceed under the court's direction to determine the true value of the Kohl's parcel for tax year 2014 in accordance with the court's decision. We consider the notice of appeal, the statutory transcript certified by the auditor, the record of the hearing before this board ("H.R."), the parties' written arguments, and the court's decision.

The Greene County Auditor initially valued the Kohl's parcel at $6,197,150 for tax year 2014. The Board of Education of the Beavercreek City Schools ("BOE") filed a complaint seeking an increase in the value of the Kohl's parcel and other parcels which were reported as having sold together in October 2014 for a total price of $47,479,900. The BOE presented the conveyance fee statement and deed as evidence of the sale. Beavercreek Towne Station LLC filed a countercomplaint seeking a value of $10,000,000.

At the BOR hearing, counsel for Beavercreek Towne Station LLC presented the purchase and sale agreement for the October 2014 sale transaction, by which it purchased two properties, including the subject parcel and surrounding parcels in the Beavercreek Towne

Centre, and two parcels comprising a separate shopping center known as Fairfield Crossing. The portion of the price allocated to the Kohl's parcel in the purchase agreement is $11,15,409. H.R., Ex. 3. Counsel argued the sale price for both groups of properties was determined without regard to the individual values of each individual parcel, and that, therefore, the allocation of the purchase price is not indicative of each property's market value. He further argued the properties were not listed on the open market. The BOE objected to admission of the purchase agreement without any authenticating testimony. After considering the arguments and evidence presented, the BOR increased the value of the Kohl's parcel to $13,233,800. Notably, such allocation appears to be based on the ratio of the subject's parcel's initial value as determined by the auditor, to the overall value of the sold parcels as determined by the auditor, rather than the allocation of the purchase price stated in the purchase agreement. See *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

Beavercreek Towne Station LLC and Kohl's thereafter appealed to this board. At this board's hearing, the owner presented the appraisal report and testimony of Richard G. Racek, Jr., who opined a value of $5,950,000 for the Kohl's parcel as of tax lien date. Although this board ultimately struck his report and testimony, and Kohl's written argument, the Supreme Court reversed our determination, based on its determination that Kohl's was acting on behalf of the owner in presenting the evidence. *Beavercreek Towne Station,* supra, at ¶20-25. In our prior decision, involving multiple other parcels in the Beavercreek Towne Centre, we adopted the allocated price from the October 2014 sale and did not reach the owner's appraisal evidence. The Supreme Court found this board erred by failing to consider the appraisal evidence in light of its decisions in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, and *Bronx Park S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision,* 153

Ohio St.3d 550, 2018-Ohio-1589. *Beavercreek Towne Station*, supra, at ¶29. It further noted, with regard to the specific facts of this case:

> [T]he appraiser, Richard Racek, testified that the contract rent of the Lowe's and Kohl's parcels exceeded the market rent derived from rent comparables. With respect to the Lowe's parcel, Racek opined that the prices for leased parcels were significantly higher than the prices for unencumbered parcels because "properties that are leased generally sell for far more per square foot than ones that are not leased." Thus, the appraiser's evidence could, if properly considered, substantiate a finding that the sale price might not indicate the value of the unencumbered fee-simple estate.

Id. at ¶30. See also *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856 (explaining that the creditworthiness of the tenant and whether the lease is triple net should be considered when evaluating a leased fee sale).

Here, on remand, this board is tasked with giving full consideration to Mr. Racek's appraisal of the subject parcel. The court has also instructed that, "[t]o the extent that the BTA adopts an allocated sale price on remand, the BTA shall also give full consideration to the propriety of the allocation in light of all the evidence in the record." *Beavercreek Towne Station*, supra, at ¶31.

At the outset our of review of the valuation of the Kohl's parcel, we acknowledge that there is no dispute that the sale of the subject parcel was arm's-length. The owner makes essentially two arguments against relying on the sale: (1) that the sale was of the leased fee interest and included the value of an above-market lease, and (2) the allocation made between

the two purchased shopping centers, and each center's individual parcels, had no relation to the fair market values of the properties.

The court explained in its decision that "amended R.C. 5713.03 calls for valuing the 'fee simple estate, as if unencumbered ***." Id. at ¶15. The owner here argues that the October 2014 sale involved the sale of the subject real property and assignment of the lease on the property. The purchase agreement confirms such fact. H.R., Ex. 3. We must therefore determine whether the lease reflected market terms. *Terraza 8*, supra, at ¶34. No one with personal knowledge of the lease terms testified at either the BOR hearing or this board's hearing. The owner has not presented the written lease for our review. The only evidence of the actual lease terms for the Kohl's property is Mr. Racek's testimony and report, wherein he states:

> As of tax lien date, the property was leased by Kohl's Illinois, Inc. with a rental rate of $641,437 per year or $7.04 per square foot based upon net lease terms. This was a build to suit lease which was entered into on December 23, 1993 and had a commencement date of October 14, 1994. The lease is set to expire on January 31, 2032 unless options are exercised.

H.R., Ex. C at 53. See also H.R. at 103-104. Mr. Racek goes on to opine that a market rent for the subject property would be $5.50 per square foot. H.R., Ex. C at 53. The terms of the actual lease in place at the time of the October 2014 sale are key facts for this board to review in considering whether the sale of the property reflected above-market terms. We acknowledge that appraisers regularly review leases as part of their appraisal process; however, as the Supreme Court acknowledged in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, this board is not required to accept hearsay statements regarding material facts about the subject property itself. Id. at ¶36-38. Here, the

terms of the Kohl's lease have only been presented through Mr. Racek, as a conduit. We agree with the BOE that such information is hearsay. We accordingly find the record before us lacks competent evidence of the terms of the Kohl's lease, and, therefore, find no evidence to support the argument that the subject property sold at above-market lease terms.

Our inquiry does not end, as we must also address whether the allocation of the purchase price to the subject parcels is the best evidence of their respective values. In addressing "bulk sales," the court has recognized that "the familiar precept that '[t]he best evidence of "true value in money" of real property is an actual recent sale of the property in an arm's-length transaction' has a corollary: the principle that the law favors a 'proper allocation of [a] lump sum purchase price' over 'an appraisal ignoring the contemporaneous sale.' *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, *** (1977), paragraphs one and two of the syllabus." *Arbors East RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611, ¶16. When this board considers an allocated sale price, we must determine "whether the amount allocated reflects the true value of the parcel for tax purposes." *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶15. As the party opposing the allocation included in the purchase agreement, Kohl's bears the burden to demonstrate that such allocation does not reflect the true value of the Kohl's parcel. *FirstCal*, supra, at ¶25, 28.

Kohl's argues that Mr. Racek's appraisal is more reflective of the true value of the Kohl's parcel. Mr. Racek opined that the value of the parcel as of January 1, 2014 was $5,930,000 using the sales comparison and income capitalization approaches to value. In his analysis, he determined that the highest and best use of the property is continued use as a single tenant retail facility, while noting that the 20-year-old improvements are functionally obsolete

for most second-generation users. H.R., Ex. C at 25. He selected eleven comparable sales for his sales comparison analysis, including fee simple and leased fee transactions, that sold for between $10.55/SF and $108.17/SF in 2012 through 2015. After adjusting the sales, he arrived at a value of $65/SF for the subject property. Although he acknowledged the auditor's property record card indicates the Kohl's building is 100,197 square feet, Mr. Racek indicated that such number includes 9,024 square feet of mezzanine space which should not be included in the gross building area. H.R. at 139. He applied his opinion of $65 per square foot under his sales comparison analysis to the non-mezzanine square footage, i.e., 91,173 square feet, for a total value of $5,930,000.

Mr. Racek arrived at a total value of $5,950,000 under his income capitalization approach. He determined a market rent of $5.50/SF was "optimistic," based on six in-place lease comparables and eight asking lease rates, on a triple net basis. Id. at 53. He then applied a 5% vacancy rate based on area surveys, and deducted from the resulting gross income 3% for management and administrative costs, $0.50/SF for replacement reserves, and arrived at a net operating income of $416,501. He cited four sales as comparables in his capitalization rate analysis, which ranged from 5.53% to 9.7%. Given the subject property's desirable, stable retail area, he considered 7% to be reasonable for the subject property, and capitalizing the net operating income at that amount, arrived at a total value of $5,950,000.

Giving less weight to the income approach, Mr. Racek reconciled to a value of $5,930,000 as of January 1, 2014, and further allocated the value between land and building in accordance with the percentages used by the auditor in his initial determination of value for tax year 2014.

In weighing Mr. Racek's opinion of value against the parties' allocation of the overall

bulk sale price to the Kohl's parcel, we are struck by the sizeable difference in values - $11,155,409 and $5,930,000, or 61%. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20. If we use the Kohl's rental rate as relayed by Mr. Racek ($7.04/SF), and substitute it in his income approach to value, the resulting net operating income is $545,497.90. Capitalizing that income at 7%, we arrive at a value of $7,792,824.28. Such value is still over $3,360,000 below the amount allocated to the Kohl's parcel in the purchase agreement. We find no explanation in the record for such difference.

Unfortunately, no one involved with the allocation of the purchase price in the October 2014 transaction was presented as a witness before either this board or the BOR to explain the parties' allocation process. While the BOE subpoenaed a witness knowledgeable about such allocation, the witness who appeared in response at this board's hearing, Joseph Schlosser, had no knowledge of the basis for the allocation and was only generally familiar with the sale transaction. H.R. at 12-13. Counsel for Beavercreek Towne Station, LLC argued at the hearing that the subpoena requested an officer/member of the entity, and Mr. Schlosser was the only individual who met the specific requirements of the subpoena. The BOE objected at this board's hearing, but took no further action to enforce the subpoena. We are therefore left only to speculate about the basis for the allocation of the overall purchase price to the Kohl's parcel. As such, we are unable to find the parties' allocation to be reliable evidence of the true value of the property.

In the absence of any evidence to support the allocation, we find Mr. Racek's appraisal value constitutes the best evidence of the value of the Kohl's parcel on tax lien date.

It is therefore the order of this board that the true and taxable values of the subject parcel as of January 1, 2014, were as follows:

PARCEL NUMBER B42-0004-0002-0-0021-00

TRUE VALUE

$5,930,000

TAXABLE VALUE

$2,075,500

OHIO BOARD OF TAX APPEALS

LUBA GAWUR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-800
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
PORTAGE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LUBA GAWUR
OWNER
601 WOODSIDE DR
KENT, OH 44240

For the Appellee(s) - PORTAGE COUNTY BOARD OF REVISION
Represented by:
ALLISON BLAKEMORE MANAYAN
ASSISTANT PROSECUTING ATTORNEY
PORTAGE COUNTY
241 SOUTH CHESTNUT STREET
RAVENNA, OH 44266

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The county appellees attached to their motion the affidavit of the manager of the BOR, asserting that appellant failed to file notice of the appeal with the Portage County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CHARLOTTE A. RAUSCH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-748
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CHARLOTTE A. RAUSCH
OWNER
2576 HICKORY PINE LN
GROVE CITY , OH 43123-1295

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On June 12, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision stating that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an

appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARY K. KEEBLE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-673
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MARY K. KEEBLE
PRESIDENT
KEEBLE CONSTRUCTION COMPANY INC.
6910 CADY RD.
NORTH ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellant's notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and this board's small claims telephonic hearing.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR, and appellant has not disputed such fact. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOEL WICHTMAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-672
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOEL WICHTMAN
OWNER
1049 PINNACLE CLUB DR
GROVE CITY, OH 43123

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On June 6, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision stating that there is no record of a decision issued for the parcel cited by the appellant in the notice of appeal to this board.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and

determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARY PREVITE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-665
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MARY PREVITE
735 PARKSIDE BLVD.
EUCLID, OH 44143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, appellant's notice of appeal, the statutory transcript ("S.T.") certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, notice of the appeal was filed with the BOR on July 2, 2019, i.e. forty-two days after the mailing of the BOR's decision. S.T addendum at 3-4. Appellant's response did not provide documentation to demonstrate that the appeal was timely filed. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JONATHAN FULLER, (et. al.),	)	
	)	CASE NO(S). 2019-628, 2019-594,
Appellant(s),	)	2019-629, 2019-630, 2019-631,
	)	2019-632
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - JONATHAN FULLER
55 1/2 DOWNING STREET APT. 9
NEW YORK, NY 10014

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by

the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The records in these matters indicate that while appellant timely filed the appeals with this board, notices of the appeals were filed with the BOR nearly two months after the mailing of the BOR's decisions. Upon consideration of the existing records, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

DENIS CELLEGHIN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-596
	)	
vs.	)	
	)	(REAL PROPERTY VALUATION)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DENIS CELLEGHIN
23580 BRYDEN RD.
BEACHWOOD, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Cuyahoga County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellant's notice of appeal.

On May 20, 2019, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on May 1, 2019. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion a certification that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and

determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

TINAMARIE GIRARD, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-514
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - TINAMARIE GIRARD
OWNER
8084 SKYLINE DR.
BROADVIEW HEIGHTS, OH 44147

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HANS RAIDEL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-510
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - HANS RAIDEL
OWNER
428 ILLINOIS AVE
WESTERVILLE, OH 43081

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the Franklikn County Board of Revision ("BOR") has not rendered a decision that could be appealed to this board. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On May 3, 2019, the appellant filed an application for remission of a real property tax late payment penalty with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision, stating that there is no record of a decision issued for any such

application for remission.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JEFFREY GOOD, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1729
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
UNION COUNTY BOARD OF REVISION, (et. al.),	)	ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JEFFREY GOOD
Represented by:
JESSE R. MANN
ATTORNEY AT LAW
55 CAMPBELL ST.
DELAWARE, OH 43015

For the Appellee(s) - UNION COUNTY BOARD OF REVISION
Represented by:
RICK RODGER
ASSISTANT PROSECUTING ATTORNEY
UNION COUNTY
221 WEST 5TH STREET, SUITE 333
MARYSVILLE, OH 43040

MARYSVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, August 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Although having been duly notified of the hearing scheduled to proceed in this matter on 8/19/2019, the appellant(s) failed to appear at hearing and also failed to provide the required advance written notice of intent to waive hearing. See Ohio Adm. Code 5717-1-16(F); scheduling notice. Accordingly, acting pursuant to Ohio Adm. Code 5717-1-19, the present matter is hereby dismissed due to a failure to prosecute with the requisite diligence. Compare

OHIO BOARD OF TAX APPEALS

BYRON MEADOR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-904
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BYRON MEADOR
2161 KIMBERLY COURT
WICKLIFFE, OH 44092

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, September 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter for failure to file notice of the appeal with the Cuyahoga County Board of Revision ("BOR"). We decide the matter upon the motion and responses thereto, and the statutory transcript certified to this board pursuant to R.C. 5717.01.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. A review of the statutory transcript certified to this board indicates that the owner did not file notice of the appeal with the BOR. The county appellees therefore move to dismiss for lack of jurisdiction.

Appellant contends in response that he mailed a copy of his notice of appeal to the

county's assistant prosecutor, thereby fulfilling the requirement of the statute. We disagree. Although appellant notes that this board notified the assistant prosecutor, as well, through our docketing letter, the Supreme Court has found that such notifications by this board do not meet the requirement of R.C. 5717.01 that the appellant file notice of the appeal with the board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989). We concur with the county that the following quotation from the Supreme Court's decision in *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621, 623 (1998), is appropriate:

> Salem argues that delivering a copy of the notice of appeal to the assistant prosecutor satisfies the filing requirement. Filing a copy of the notice of appeal with the board of revision is, however, a different requirement from serving a copy of pleadings upon the board's attorney after litigation has begun at the BTA. R.C. 5715.44 provides that the county prosecutor is to act as counsel for the board of revision in defending any proceedings in any court in which the board of revision is a party. However, neither R.C. 5715.44 nor R.C. 5717.01 authorizes an appealing party to serve, or the prosecuting attorney to accept, a copy of a notice of appeal in lieu of filing with the board of revision.

See also *Kinat v. Lake Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2010-Y-1213, unreported; *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872 (a filing requires physical delivery to the proper official). We find appellant's sending notification to the assistant prosecuting attorney failed to comply with the requirement of R.C. 5717.01.

As the court recently stated in *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746, the "case law confirms that failure to comply with R.C. 5717.01's dual filing requirements, including the time limits for filing an appeal, 'is fatal to the appeal.'" Id. at

¶11, quoting *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Appellant has provided no evidence that the dual filing requirement was met. He has therefore failed to establish that he complied with the statutory requirements for properly invoking the jurisdiction of this board.

It is therefore the order of this board that the county appellees' motion is hereby granted, and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

WEN WEN LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-89
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - WEN WEN LLC
Represented by:
CHARLIE WEN
2117 GROSSAMER AVE
REDWOOD CITY, CA 94065

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, September 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Wen Wen LLC appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the subject property for tax year 2017. No hearing with this board was requested, and no party filed written argument. Accordingly, we decide the appeal on the notice of appeal and the transcript certified by the fiscal officer.

[2] The fiscal officer valued the subject property, a residence, at $86,000 for tax year 2017. Appellant filed a decrease complaint with an opinion of value of $56,000. As justification, appellant stated:

> "I bought this property due to scam of Rooftop, I would like to sell the property, and I called several agent, due to poor to no rehab, I got estimated market value of $20,000-$55,000; I think $56,000 should be a reasonable market value due to no agent want to take the job higher than $56,000."

[3] Appellant did not attend the BOR's hearing nor did appellant supply any tangible evidence in support of the reduction. The BOR retained the fiscal officer's value, finding appellant failed to carry its burden of proof. Appellant filed a notice of appeal with this board. No hearing was requested and no written argument was submitted.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin*

Cty. Bd. of Revision, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnishcompetent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the fiscal officer nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. ofEdn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence that the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, appellant does not rely on a recent sale in support of its proposed value. In fact, the complaint states the property was not sold within the three years prior to the filing of the complaint. S.T., Ex. A. However, we note the parcel card appears to reference a January 29, 2015 sale for $27,500. No sale documents or other evidence about that possible sale is before us. Therefore, this board cannot find that sale to be facially valid in the absence of some additional information on the complaint, testimony, a conveyance fee statement, deed, or purchase agreement. See *Lunn v. Lorain Cty. Bd. of Revision*, 149 OhioSt.3d 137, 2016-Ohio-8075. While this board has recognized evidence of a sale contained in a record card can be a sufficient basis to determine value, this case is different factually because (even assuming the sale was arm's-length), appellant has abandoned the sale in favor of a higher valuer. See *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported.

Additionally, the property's history as reflected in the parcel card calls into question the utility of the sale. The parcel card also shows renovations and improvements have been made to the subject in recent years meaning the 2015 sale may or may not reflect value as of the 2017 tax-lien date. See *Robitaille v. Franklin County Board of Revision* (Mar. 26, 2019), BTA No. 2018-1295, unreported (existence or absence of significant post-sale changes can affect the utility of sale price). Even if the January 2015 was facially valid, appellant's complaint impliedly acknowledges the value of the subject property has increased since the sale. Accordingly, this board does not find a facially valid sale has been presented. Therefore, no presumption of value has been created.

[6] In the absence of a qualifying sale, a party must present other evidence in support of a proposed value. While an owner's opinion of value is competent, this board properly rejects an owner's opinion of value "when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018),BTA No. 2018-414, unreported. Here, appellant argues the value of the subject should be$56,000 because unspecified real estate salespersons stated the market value was between$20,000 and $55,000. This board does not find those hearsay statements are credible evidence of value. First, the statements are hearsay and no party with personal knowledge testified before the BOR or this board. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19. Second, salespersons are not appraisers, meaning they "may or may not have extensive appraisal experience." *Springfield Local Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported (quoting The Appraisal of Real Estate (13th Ed.2008)). This board has also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Also, this board has held unsuccessful sales are not competent evidence of value. See, e.g., *Modern Development Corp. v. Franklin Cty. Bd. of Revision* (July 14, 2016), BTA No.2015-1847, unreported. The situation in this case is even less compelling because appellant does not even rely on an unsuccessful sale; it relies on unsuccessful attempts to obtain a salesperson to market the property for more than

$56,000.The complaint also implies the property has negative characteristics. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick*, supra, at 4 (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v.Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7). Here,the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to adjust the subject's value.

[7] Based upon the foregoing, we find appellant has failed to meet its burden to prove a value different from the fiscal officer's initial value. For tax year 2017, we order the property to be assessed as follows:

PARCEL NUMBER 682-33-071

TRUE VALUE

$86,000

TAXABLE VALUE

$30,100

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1107 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

DAKOTA RIDGE ONE LLC
23 N. WASHINGTON ST.
YPSILANTI, MI 48197

Entered Wednesday, September 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's value of the subject property, two parcels, for tax year 2017. The BOE requested a hearing with this board but then waived its appearance at that hearing. No party filed written argument. We decide the appeal on the notice of appeal and the transcript certified by the fiscal officer.

[2] The fiscal officer valued the subject property, apartments, at a combined $804,690 for

tax year 2017. The BOE filed an increase complaint requesting a combined value of $2,000,000 per a November 2017 sale. In support, the BOE supplied the conveyance fee statement, which indicates owner-appellee Dakota Ridge One LLC ("Dakota") purchased the subject for $2,000,000 on November 16, 2017. The statement also indicates no portion of the sale price was attributable to non-realty. The parcel card also contains the sale price but not the grantor. The BOE further supplied the deed. Only the BOE attended the BOR hearing. With one member dissenting, the BOR rejected the sale price citing "lack of sufficient evidence." The BOE appealed to this board.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. A sale that post-dates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. Of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their initial burden with sale documents. See *Lunn*, supra, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

[4] In this case, the BOE met its initial burden by presenting a facially valid sale with the deed and conveyance fee statement. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14 (conveyance fee statement supported by parcel card sufficient to create presumption). Those documents confirm Dakota purchased the property in November 2017 for $2,000,000. Accordingly, the burden shifts to any opponent of the sale price to rebut. However, no party has submitted evidence in rebuttal or even participated in this proceeding or the BOR proceeding. Accordingly, we find the presumption created by the sale has not been rebutted.

[5] Per *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2005-Ohio-1921, it is the decision and order of this board that for tax year 2017, the properties shall be assessed in accordance with the following values:

PARCEL NUMBER 68-53677

TRUE VALUE

$577,290

TAXABLE VALUE

$202,050

PARCEL NUMBER 68-53675

TRUE VALUE

$1,422,710

TAXABLE VALUE

$497,950

OHIO BOARD OF TAX APPEALS

WALTER O. BALO, JR., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-1092
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LICKING COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - WALTER O. BALO, JR.
3087 OSBORN RD
NEWARK, OH 43055

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
CAROLYN J. CARNES
ASSISTANT PROSECUTING ATTORNEY
LICKING COUNTY
20 S. SECOND ST., 4TH FLOOR
NEWARK, OH 43055

EVAN & TAYLOR N. WILLIAMS
3087 OSBORN RD. NE
NEWARK, OH 43055

Entered Wednesday, September 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant Walter Balo, Jr. appeals a decision of the Licking County Board of Revision ("BOR"), which rejected in part his request to reduce his property value to $69,000 for tax year 2017. He also challenges the valuation of his manufactured home for tax year 2018. While this appeal was pending before us, Mr. Balo sold the property and the manufactured home for $160,000 in an arm's-length transaction. We now consider this matter upon the notice of appeal, the statutory transcript certified by the BOR, and the record of this board's hearing ("H.R.").

[2] The subject property consists of two parcels: 06531450800.001 and 06531450800.002. A manufactured home sits on one parcel and, for tax year 2017, was valued as real property.

H.R. at 20. The county auditor originally valued the subject property at a combined $150,900 for tax year 2017. Mr. Balo filed a decrease complaint asking for a combined valuation of $69,000. At the BOR hearing, Mr. Balo testified and presented photographs of the property arguing the property was overvalued.

[3] Ultimately, the BOR reduced the value to only $145,000. The BOR orally stated the reduction was warranted because the manufactured home was overvalued. While the record is unclear, when he asked, Mr. Balo requested to have the manufactured home taxed separately from real property for 2018. H.R. at 6, 20; see also R.C. 4503.06 (manufactured or mobile home tax). When he appealed to this board, he appealed the 2017 values and the 2018 manufactured home value.

[4] After the BOR decision but before the hearing before this board, Mr. Balo sold the property, including the manufactured home, through a realtor to unrelated buyers. H.R. at 15. Mr. Balo and the buyers negotiated a sale price and eventually agreed to a price of $160,000. Id. at 15. The conveyance statement was recorded September 21, 2018. H.R., Ex. 1. Due apparently to an oversight, Mr. Balo transferred the manufactured home title on November 9, 2018. H.R. at 22.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. We must independently consider all evidence properly before us. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996). We also determine the

weight and credibility of the evidence. *Cardinal Fed. S. &. L. v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 13 (1975).

[6] An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." *Terraza 8*, supra, at ¶ 33. The presumption remains even when the sale postdates the tax-lien date. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. When a facially valid sale is presented, the party disputing the sale price bears the burden of rebuttal. Id.

[7] Here, we find the September 2018 is the best indicator of value because it bears the trappings of an arm's-length sale. First, the sale occurred less than two years after the tax-lien date. H.R., Ex. 1; *Lone Star*, supra,at ¶ 19. We find no evidence in the record there was a significant change to the property between January 2017 and September 2018. In fact, Mr. Balo argued to the BOR the property had generally remained unchanged for years ever since he removed an old manufactured home from the second parcel.

[8] The September 2018 sale was also voluntary. Mr. Balo testified he sought out a realtor about an appraisal, and the realtor introduced Mr. Balo to the buyers. H.R. at 14-16. Mr. Balo had no preexisting relationship with the buyers, and the parties negotiated a sale price. Id. at 15. Even when a property is not marketed to the general public, we have held "the presence of open-market elements definitely militates in favor of finding a transaction to have been at arm's-length." *9654 SR 250 NW, LLC v. Tuscarawas Cty. Bd. of Revision* (July 31, 2018), BTA No. 2017-1273, unreported (quoting *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 112 Ohio St.3d, 2007-Ohio-6, ¶ 13). This sale contains "open-market elements" such as the use of a realtor to

conduct the negotiation and sale. H.R. at 15. Also, even private sales can be arm's-length. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶20. The record lacks any evidence to suggest Mr. Balo was under duress to sell the property. Again, Mr. Balo independently approached a realtor about an appraisal of the property. H.R. at 14. The realtor told Mr. Balo a buyer might be available, and Mr. Balo invited the potential buyers to make him an offer. Id. at 14. Accordingly, we find the sale is the best indication of value.

[9] We accordingly order the property to be valued at a combined $160,000 for tax year 2017. We remand this case to the BOR to recalculate the value of the manufactured home for tax year 2018 in a manner consistent with this opinion.

[10] It is the decision and order of this board that for tax year 2017, the parcels shall be assessed in accordance with the following values:

PARCEL NUMBER 065-314508-00.001

TRUE VALUE

$128,190

TAXABLE VALUE

$44,870

PARCEL NUMBER 065-314508-00.002

TRUE VALUE

$31,810

TAXABLE VALUE
$11,130

ary

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1074 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
MARRETT HANNA
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

WHITE POND MANAGEMENT LLC
320 BURNBRICK RD.
RICHFIELD, OH 44286

Entered Wednesday, September 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") affirming the fiscal officer's value of the subject property for tax year 2017. The BOE requested a hearing with this board but then waived its appearance at that hearing. No party filed written argument. We decide the appeal on the notice of appeal and the transcript certified by the fiscal officer.

[2] The fiscal officer valued the subject property at $1,697,070 for tax year 2017. The BOE

filed an increase complaint requesting a value of $1,785,000 per an October 2014 sale. In support, the BOE supplied the conveyance fee statement, which indicates owner-appellee White Pond Management purchased the subject for $1,785,000 on October 31, 2014. The statement also indicates no portion of the sale price was attributable to non-realty. The BOE supplied general CoStar information as well as a number of pictures of the subject. No additional evidence was provided. The BOR rejected the sale as too remote, and the BOE appealed to this board.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the fiscal officer nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[4] An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The sale in this case occurred more than 24 months before tax-lien date. Therefore, this board presumes the sale is too remote. A proponent can rehabilitate a remote sale, however, with evidence,

the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Here, though, this board finds the BOE has failed to provide appraisal or other credible evidence to show the 2014 sale price is still "a reliable indication of value despite the passage of time." Id.

[5] Accordingly, we see no reason to alter the fiscal officer's original valuation and order the following values for tax year 2017. See *Jakobovitch*, supra.

PARCEL NUMBER 67-61236

TRUE VALUE

$1,697,070

TAXABLE VALUE

$593,970

OHIO BOARD OF TAX APPEALS

FINLAYSON LOGISTICS ASSETS LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-129 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FINLAYSON LOGISTICS ASSETS LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION
3805 MARLANE DR
GROVE CITY, OH 43123

Entered Thursday, September 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon appellant's motion to reverse the decision of the Franklin County Board of Revision ("BOR") for tax year 2018 and remand for further proceedings. Neither the BOR nor the appellee board of education have responded to the motion.

The statutory transcript confirms that the Board of Education of the South-Western City Schools ("BOE") filed a complaint against the valuation of parcel numbers 040-008991-00 and

040-008993-00 for tax year 2017, noting the property sold in February 2016. After a hearing, the BOR issued a decision, on December 18, 2018, increasing the value of parcel 040-008991-00. Relevant here, the BOR increase value for both 2017 and 2018 (albeit to different amounts). Appellant argues the BOR's decision for tax year 2018 should be vacated, as the BOE filed a new complaint for tax year 2018 (based on a subsequent sale of the property in May 2018) on March 21, 2019.

A complaint against the valuation of real property must be filed by March 31 of the ensuing tax year. R.C. 5715.19. Accordingly, at the time the BOR issued its decision finding value for tax year 2018, i.e., December 18, 2018, the deadline by which a *new* complaint could be filed had not yet passed. In *GnA Properties, LLC v. Franklin Cty. Bd. of Revision* (May 29, 2012), BTA No. 2012-K-688, unreported, this board addressed a similar issue:

> This board has previously addressed the propriety of the Franklin County Board of Revision's attempt to exercise jurisdiction over a tax year still subject to challenge by complaint, harmonizing R.C. 5715.19(A), which authorizes certain persons to file complaints with county boards of revision, and R.C. 5715.19(D), which addresses the effect of a pending complaint upon subsequent tax years, concluding that the latter provision does not preclude a valid complaint from establishing jurisdiction in a later tax year. We have previously directed the BOR to not purport to exercise jurisdiction over a year for which a complaint may be, and ultimately is, filed, since such filing renders the earlier decision for the "open tax year" null and void.

Despite our repeated admonitions over many years, the BOR has once again exercised jurisdiction over a year still subject to challenge and for which the BOE filed a timely

complaint. We once again find such action in error and find the December 18, 2018 decision as to tax year 2018 improper.

Based upon the foregoing, we hereby grant the appellant's motion. We hereby remand this matter to the Franklin County Board of Revision with instructions to vacate its December 18, 2018 decision as to tax year 2018 and to conduct further proceeding on the BOE's tax year 2018 complaint.

OHIO BOARD OF TAX APPEALS

MARIETTA CARE, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2017-1723
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
WASHINGTON COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MARIETTA CARE, LLC
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

For the Appellee(s) - WASHINGTON COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Thursday, September 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcels 24-0042357.000, 24-0042359.000, 24-0042571.000, 24-0006380.000, 24-0009944.001, and 24-0042356.000, for tax year 2016.

We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and written argument submitted by the parties.

The subject property, a 150-bed skilled nursing facility, "is in a single three-story building constructed in 1985, containing 52,857 square feet. There are 33 private rooms, 42 semi-private rooms, and 11 three-bed wards." Statutory Transcript ("S.T.") at Exhibit F-Owner

Presented Evidence. It was initially assessed a collective value of $5,593,550. The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value. At the hearing before the BOR, the property owner submitted the appraisal report and testimony of appraiser Sam Koon, a member of The Appraisal Institute (more commonly referred to as "MAI"). Koon was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of the subject's real property value, $3,000,000, as of January 1, 2016. The BOR issued a decision, which retained the subject property's initially assessed value, and this appeal ensued.

At this board's hearing, the property owner and county appellees appeared to submit additional argument and evidence into the record. In doing so, the county appellees submitted the appraisal report and testimony of appraiser James Tellatin, MAI. Tellatin was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of the subject's real property value, $6,110,000, as of January 1, 2016.

Subsequent to the hearing, the parties submitted written argument to fully articulate their respective positions. In its submission, the property owner argued that only Koon had properly extracted the subject's real property value from the going-concern value by using the subject's actual income and expenses to determine its value under the income approach and separately valuing the certificates of need ("CONs") and furniture, fixtures, and equipment ("FF&E"). In their submission, the county appellees conversely argued that only Tellatin had properly extracted the subject's real property value from the going-concern value by separately considering the intangible business value, which included an unknowable value for the CONs, and FF&E.

When cases are appealed from a board of revision to this board, an appellant must prove

the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

In this matter, the record does not disclose a recent, arm's-length sale of the subject property; therefore, we proceed to evaluate appraisal reports and testimony from Koon and Tellatin, respectively.

In his appraisal report, Koon first determined the highest and best use for the subject property was its continued use as a nursing-home facility. He developed the income and sales comparison approaches to value. Under the income approach, he looked at the subject property's historical income and expenses from November 1, 2015 and November 30, 2016, to develop a projected operating statement. He estimated patient days of 45,290, which reflected an occupancy rate of 83% (or vacancy rate of 17%). Koon analyzed the various sources of revenue, i.e., room and board from private pay, Medicare, Medicaid, and therapy and ancillary services. He concluded to total revenue of $11,174,482. After considering expenses, including nursing and habilitation expenses, payroll taxes, and administrative costs, he concluded to total expenses of $10,485,815. He concluded to a net operating income of $688,667. He determined an overall capitalization rate based, in part, upon comparable sales, which indicated capitalization rates ranging from 11.0% to 14.1% with an average of 12.5%. Koon also consulted Marcus & Millichap Senior Housing Research Report and Senior Living Valuation

Services which indicated capitalization rates of 11% and 12.5%, respectively. He concluded to a 12.5% capitalization rate, to which he added a tax additur of 0.98%, for a 13.48% overall capitalization rate. He capitalized the net operating income of $688,667 at 13.48%, to conclude to a preliminary value of $5,108,206. He rounded down to $5,100,000 for a going-concern value. From that number, he deducted $1,800,000 for CONs, based upon sales of CONs throughout the state of Ohio between 2011 and 2016, $300,000 value of FF&E (a depreciated value based upon market information and Koon's knowledge of the long-term care industry), to finally conclude the subject's real property value to be $3,000,000.

Under his sales comparison approach, Koon compared the subject property's features to the features of six other skilled nursing facilities located throughout Ohio, which sold between January 2013 and August 2015. He first conducted a Net Operating Income Variance Analysis, which compared the net operating income per bed of the subject property and comparable properties, to determine a price per bed. Based upon this analysis, he concluded to a price of $35,000 per bed, which he then applied to the subject property's 150 beds. In doing so, he concluded to a going-concern value of $5,250,000. He next conducted a Unit Comparison Analysis, which compared the salient features of the subject property and comparable properties, as well as the conditions of the sales of the comparable properties. After adjusting the comparable sales based upon differences, he concluded to a range in value from $39,600 to $53,125 per bed. Based upon this analysis, he concluded to a price of $40,000 per bed, which he then applied to the subject property's 150 beds. In doing so, he concluded to a going-concern value of $6,000,000. Given the two analyses, he placed the most weight on the Net Operating

Income Variance Analysis and concluded to a going-concern value of $5,300,000, from which he deducted $1,800,000 for CONs and $300,000 for FF&E, to finally conclude the subject's real property value to be $3,200,000.

Koon reconciled the values indicated by the income and sales comparison approaches to value. He placed the most weight on the income approach to value, given the subject property's income producing nature, before finally concluding the subject's real property value to $3,000,000 as of January 1, 2016.

In his appraisal report, Tellatin first determined the highest and best use for the subject property was its continued use as a nursing-home facility. He developed the cost, sales comparison, and income approaches to value. Under the cost approach, he first developed a value of the land portion of the subject property's approximate 4.76 acres, or 207,215 square feet, by comparing it to five vacant land sales located in the same city or county as the subject property. After adjusting for differences, he concluded to a land value of $2.20 per square foot, or $460,000. Tellatin relied on various sources to determine the replacement cost new of the building improvements to be $5,441,498, which reflected deductions of $8,494,497 for incurable physical deterioration and $0 for functional and external obsolescence, and replacement cost new of site improvements to be $183,053, which reflected $366,106 for incurable physical deterioration. He concluded to a depreciated value of site improvements to be $5,625,000. To that number, he added $600,000 for the depreciated value of the equipment and $460,000 for land value to preliminarily conclude the subject property's improvements and land value to be $6,685,000. After adding $375,000 and $140,000, to reflect absorption costs

and depreciated value of profit, respectively, Tellatin concluded the subject's going-concern value to be $7,200,000. It should be noted that Tellatin gave the cost approach to value very little consideration.

Under the sales comparison approach, Tellatin compared the subject property's economic and physical characteristics to the economic and physical characteristics of five other nursing home properties that sold throughout Ohio between June 2013 and January 2016. After adjusting the comparable properties for differences with the subject property, he placed the most emphasis on sale five, which involved the transfer of a nursing-home facility located in the same city as the subject property (and required the least adjustments) and the least emphasis on sales two and four, which involved the transfers of nursing-home facilities with markedly different economic characteristics (and required the most adjustments). In doing so, he concluded the subject's real property value to be $65,000 per bed or $9,750,000.

Under the income approach, Tellatin looked at the subject property's historical income and expenses, from December 31, 2013 and December 31, 2015, to develop a stabilized income statement. He estimated resident days of 46,541, which reflected an occupancy rate of 85% (or vacancy rate of 15%). He analyzed the various sources of revenue, i.e., from private pay, Medicare, Medicaid, managed care, ancillary services and bad debt. He concluded to total revenue of $11,535,095. After considering expenses, including management fee, payroll taxes, and administrative costs, he concluded to total expenses of $10,170,170. He concluded to a net operating income of $1,364,925. He determined an overall capitalization rate based, in part, upon comparable sales, which indicated capitalization rates ranging from 13.4% to 17.5% with an average of 14.5%. He also considered capitalization rates based upon the band of investment method, 15.24%, and debt coverage ratio of the comparable sales, 15.59%. Though the average

of the various methods of determining capitalization rates was 15.11%, he selected a capitalization rate of 15.25%, to which he added a tax additur of 1.255%, before concluding to a 16.51% overall capitalization rate. He capitalized the net operating income of $1,364,564 (which differs slightly from the previously indicated net operating value) at 16.51%, to conclude the subject property's going-concern value to be $8,273,000 as of January 1, 2016. He continued his analysis by developing a discount cash flow ("DCF") analysis to determine present value. After considering the trends for income and expenses, in light of inflation, he concluded the subject's going-concern value, under DCF analysis, to be $8,279,000 as of January 1, 2016.

Tellatin reconciled the values indicated by the three approaches to valuing real property. As previously noted, Tellatin concluded that the cost approach was not persuasive to determine the subject property's going-concern value; however, he determined that it was helpful to determine proper allocations to the many components of the going-concern value. He decided that the subject property's going-concern value lay within the range of the income approach to value, $8,273,000 and $8,279,000, and sales comparison approach to value, $9,750,000. He distilled the subject property's going-concern value, i.e., $600,000 for FF&E and $2,020,000 for intangible assets, to finally determine the subject's real property value to be $6,110,000 as of January 1, 2016.

We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of*

Revision (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

Both appraisers agreed that, in valuing the subject property, it was necessary to develop a going-concern value, given that the subject property is used as a skilled nursing facility, and then to "back out" the value of the real estate. See, *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611, at ¶ 19. However, they disagree about the best method and factors for doing so. Koon's appraisal report and testimony highlights his theory that the subject's going-concern value includes real property value, tangible personal property value, and CONs. Tellatin's appraisal report and testimony highlights his theory that the subject's going-concern value includes real property, tangible personal property, and intangible personal property, which includes items that cannot be separately valued including CONs, goodwill, and workforce. Koon and Tellatin also disagreed on the method by which to value the CONs. Because there is a market for the transfer of CONs, Koon looked to the market to determine the value of the subject's 150 CONs. However, Tellatin noted that the value of CONs are not static and increase in value as real property value decreases, i.e., when the real property's highest and best use is something other than use as a nursing-home facility.

Upon review, we find shortcomings with both appraisal reports and believe that the subject's real property value is best determined by blending the two appraisal reports. Because the subject's real property value is used to generate income, we agree with the appraisers that the income approach to value best illuminates its value and will, therefore, focus our attention there.

With regard to Koon's appraisal report, we do not find the expense analysis to be supported by market data. It is well settled that "an appraiser may employ actual income as

reduced by actual expenses if both amounts conform to market." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). A review of Koon's expense analysis highlights that there are several factors of such analysis that fall substantially outside of the market data for "Peer Group 3 [-] Average 2015" and "Ohio Average 2015," data contained within his appraisal report. Further review of the BOR hearing record indicates that Koon conceded that point. The property owner has failed to provide any evidence to support the use of the subject's actual income and expenses were appropriate and our review of the entire record fails to glean such support.

With regards to Tellatin's appraisal report, we find his appraisal report runs afoul of Supreme Court case law. In *HCP EMOH, L.L.C. v. Washington Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4750, the court considered dueling appraisal reports that valued an assisted-living facility. In doing so, the court concluded that this board committed legal error by accepting an appraisal report that used a lease-coverage ratio, under the income approach to value, based upon lease payments tied to percentages of income of the businesses, i.e., the income aspect of the appraisal report. According to the court, "[t]he net leases from which [the appraiser] crafted his lease-coverage ratio are problematic in the way that the sales-per-square-foot metric from *Higbee [Co. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 325, 2006-Ohio-2] was: the leases reflect business value, not realty value." Id. at ¶19. We note that the county appellees concede that Tellatin's lease-coverage ratio analysis mirrored that of the violative lease-coverage ratio analysis in *HCP*. See County Appellees' Post-Hearing Brief. As such, similar to the court's analysis in *HCP*, we must conclude that "[b]ecause [the appraiser] crafted his lease-coverage ratio from flawed inputs, it follows that any subsequent calculations built on the lease-coverage ratio, including his final opinion of value, are flawed

too." Id. at ¶20. However, given that Tellatin's expense analysis is well supported by market data, we find such information useful in our quest to independently determine the subject's real property value.

Based upon the foregoing, we find that the subject's going-concern value is best estimated using Koon's income approach, sans his expenses analysis. Instead, we will rely on Tellatin's expense analysis. Furthermore, though we acknowledge the county appellees' argument that the CONs cannot be separately valued, we find no error in Koon's decision to value them independent of the subject's real property value. As his appraisal report and testimony demonstrated, there is a market for the transfer of CONs in Ohio. Given that the CONs are severable from the going-concern value, it stands to reason that Koon would look to the CON market to separately value the 150 CONs at issue in this matter.

Accordingly, we modify Koon's stabilized income approach to value as follows:

Total Revenue	-	$11,174,482
Total Expenses	-	$10,170,170
Net Operating Income	-	$1,004,310 (rounded)
Tax Loaded Capitalization Rate	-	13.48%
Reconciled Going Concern Value	-	$7,450,370 (rounded) Less
Value of CONs	-	$1,800,000
Less Value of FF&E	-	$300,000
Subject's Real Property Value	-	$5,350,370

Accordingly, it is the order of this board that the subject's real property value is as follows as of January 1, 2016:

PARCEL NUMBER 24-0042357.000
TRUE VALUE: $5,304,200

TAXABLE VALUE: $1,856,470

PARCEL NUMBER 24-0042359.000

TRUE VALUE: $10,020

TAXABLE VALUE: $3,510 PARCEL

NUMBER 24-0042571.000 TRUE

VALUE: $9,650

TAXABLE VALUE: $3,380

PARCEL NUMBER 24-000638.000

TRUE VALUE: $24,650 TAXABLE

VALUE: $8,630

PARCEL NUMBER 24-0009944.001

TRUE VALUE: $220

TAXABLE VALUE: $80

PARCEL NUMBER 24-0042356.000

TRUE VALUE: $1,630

TAXABLE VALUE: $570

OHIO BOARD OF TAX APPEALS

AL GAMMARINO, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-278
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - AL GAMMARINO
OWNER
3020 GLENFARM COURT
CINCINNATI, OH 45236

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Thursday, September 5, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter comes before this board upon a notice of appeal from a decision of the Hamilton County Board of Revision ("BOR") determining the value of parcel number 208-0055-0134 for tax year 2017. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the auditor, the record of the hearing before this board ("H.R."), and the parties' written arguments.

[2] Appellant Al Gammarino challenged the value of the subject parcel, located at 2783 Shaffer Avenue and improved with a single-family residence, by way of a complaint against the valuation for tax year 2017. The auditor valued the property at $29,280 during the sexennial reappraisal of properties in Hamilton County for tax year 2017. On the complaint, Mr.

Gammarino requested a value of $15,000 – the value set for the prior triennial period (2014-2016). He stated the increase in value was not justified due to the condition of the property, including recent vandalism, and comparable sales.

[3] At the BOR hearing, Mr. Gammarino testified that the 100% increase in value from the prior tax year to 2017 was not warranted given that the property had not changed; however, he indicated the property was vandalized in the fall of 2016 and much of the plumbing was removed and other damage was inflicted. He argued that the auditor failed to inspect the property as part of the sexennial reappraisal process, as is required by R.C. 5713.01(B). Mr. Gammarino indicated that he believes the auditor's prior value of $15,000 is supported by comparable sales, specifically noting three sales ranging from $17,000 to $26,500 that occurred between October 2016 and October 2017. Applying the average sale price per square foot from those three comparable sales to the subject, he calculated a value of $15,106. Camilla Hileman, an appraiser employed by the county auditor's office, testified to three comparables she believed were appropriate for the subject, though she noted that her selection of comparables did not take into account the condition of the subject property following the vandalism. Her sales ranged from $34,000 to $39,000. In rebuttal, Mr. Gammarino noted that one was significantly remodeled in 2014, and questioned Ms. Hileman's selection of comparables not on the subject's street given the availability of sales there. Ms. Hileman questioned Mr. Gammarino's sales, noting that one was improved with a two-family dwelling, one sold above its listing price (implying possible concessions as part of the sale), and one was larger than the subject and sold at its listing price. After considering all the evidence before it, the BOR found that Mr. Gammarino had failed to quantify the effect of the negative characteristics of the property and issued a decision retaining the auditor's initial valuation.

[4] On appeal to this board, Mr. Gammarino again requests a reduction in value to $15,000. At this board's hearing, and in his written argument, he reiterated and expanded upon the legal arguments made at the BOR regarding the auditor's failure to inspect the property. He indicated he has been a real estate broker for 37 years and is very familiar with the subject's area, having owned this property since 1985. He again challenged the comparables presented by Ms. Hileman. In his written argument, the county auditor argues that this board lacks jurisdiction to grant relief for the auditor's alleged failure to comply with R.C. 5713.01(B), and argues that appellant has failed to meet his burden of proof in this matter.

[5] As the appellant in this matter, the burden is Mr. Gammarino "to demonstrate that the value [he advocates] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, "'[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" (Footnote omitted.) Id. at ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

[6] Before reaching the merits of this matter, we acknowledge the county auditor moved to strike all legal argument made by the appellant, arguing that such actions constitute the unauthorized practice of law. We disagree. Appellant is not appearing on behalf of anyone in a representative capacity. He appears before this board pro se. As such, the motion is hereby denied.

[7] At the outset, we address appellant's argument that the auditor's alleged failure to comply with R.C. 5713.01(B) should result in reinstatement of the prior triennial value. R.C.

5713.01(B) states, in relevant part:

> The auditor shall assess all the real state situated in the county at its taxable value in accordance with sections 5713.03, 5713.31, and 5715.01 of the Revised Code and with the rules and methods applicable to the auditor's county adopted, prescribed, and promulgated by the tax commissioner. The auditor shall view and appraiser or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate, *** including the land and improvements located thereon at least once in each six-year period ***.

See also Ohio Adm. Code 5703-25-06(B), 5703-25-12(C). We agree with the county auditor that this board has no jurisdiction to determine whether the auditor complied with his duties under R.C. 5713.01. However, we address appellant's argument to the extent it has bearing on the presumption of regularity to be applied to the auditor's valuation of the property. See *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 412, 2016-Ohio-1506, ¶57.

[8] Appellant asserts the auditor did not view, or cause to be viewed, the exterior of the property. (We acknowledge that the auditor is not required to view the interior of properties in conducting a sexennial reappraisal. *DCWI Office N., L.L.C. v. Montgomery Cty. Aud.*, 195 Ohio App.3d 235, 2011-Ohio-4011.) The basis of this assertion is the purported failure of the auditor (or his staff) to request permission of Mr. Gammarino to enter upon the subject parcel. From the picture included in the auditor's property record information, it is clear the subject property is easily visible from the street. It is not hidden by landscaping, gates, or distance from the public right-of-way. Mr. Gammarino has not indicated that any of the basic data included in the auditor's property record card about the features of the property is in any way inaccurate. We

therefore find nothing in the record before us to contradict the presumption of regularity accorded to the auditor in valuing the property. Having so found, the burden is on Mr. Gammarino to prove a value different from the auditor's.

[9] We reject appellant's argument that, because the character of the property has not changed since the prior tax lien date (or since the date of his purchase in 1985), no value increase is warranted. Appellant cites the Supreme Court's statement in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, at ¶26, that "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." See also *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. Here, it is unclear whether appellant is advocating that the property be valued in accordance with his 1985 purchase price. To the extent he is, we reject such argument outright. See *Akron*, supra, at ¶26 ("a sale that occurred more than 24 months before the lien date and that is reflected in the property record *** should not be presumed recent when a different value has been determined for that lien date as part of the six-year reappraisal."). To the extent he argues that the case law applies to the change in value in a sexennial reappraisal, we likewise reject his argument. Mr. Gammarino testified that the condition of the property *has*changed since the prior tax lien date – the property was damaged due to vandalism in the fall of 2016. Moreover, he has presented no evidence that the market conditions have remained unchanged from 2016 to 2017. And, indeed, appellant (a broker with 37 years' experience in the area) testified before this board that the market in Cincinnati has increased since the prior tax lien date, though not enough to warrant the increase in value advocated by the auditor for this property. H.R. at 20. Simply carrying forward the value from the prior triennial period is inappropriate in the absence of any such evidence. See *AERC Saw*

Mill Village, Inc. v. Franklin Cty. Bd. of Revision, 127 Ohio St.3d 44, 2010-Ohio-4468.

[10] We therefore turn to appellant's evidence of value. Appellant relies on the condition of the property, as evidenced by photographs, H.R., Ex. A, and his own opinion of value in light of his experience owning and selling real estate as a real estate broker. He submitted comparable sales he considered more appropriate than Ms. Hileman's, and opined the subject property's value should be only $15,000. However, we question the reliability of appellant's comparables. As the attorney examiner noted during our hearing, appellant's first comparable sale (2690 Shaffer Avenue) appears to have been sold by HUD. H.R. at 16-18. Sales by HUD have been found by the Supreme Court to be forced sales and generally not representative of market value. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907; *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431. We also find the remaining sales unreliable evidence of value in the absence of appropriate adjustments. The characteristics of appellant's comparable sales differ from the subject property; accordingly, they must be adjusted to allow this board to make an appropriate comparison. We are unable to determine, based on the limited data provided, whether each property is a good comparison to the subject. We further reject appellant's reliance on averaging the sale prices of his three comparable sales and applying such price to the subject's square footage, as we have in the past. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17,2005), BTA No. 2004-T-1140, unreported.

[11] Having rejected his comparable sales evidence, we turn to appellant's arguments regarding the condition of the property following its vandalism in 2016. While the condition of

the property may affect its fair market value, appellant must establish *how* those defects affect value. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7 (without evidence how defects may impact property value, the defects "are simply variables in search of an equation."). Appellant continues to argue that the property should simply remain valued as it was in the previous triennial period. Such argument is without merit. Each tax year stands alone. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461. In the absence of a probative analysis of how the property's condition affects its value, e.g., an appraisal, we are unable to independently determine a value different than the auditor's initial value. *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078.

[12] Finally, we reject appellant's argument that this property has been valued disproportionately higher than other properties. "Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996).

[13] Based upon the foregoing, we find appellant has failed to meet his burden of proof in this matter. It is therefore the order of this board that the true and taxable values of the property as of January 1, 2017, were as follows:

TRUE VALUE

$29,280

TAXABLE VALUE
$10,250

OHIO BOARD OF TAX APPEALS

EDWARD C. JULIAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1188
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - EDWARD C. JULIAN
Represented by:
LINDSEY WRUBEL
ESQUIRE
OTT & ASSOCIATES CO., LPA
1300 E. 9TH ST., #1520
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the

provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, his notice of the appeal was filed with the BOR thirty-five days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BRANDY BANKS, MEGHAN BANKS LARRICK, & AMY BANKS SANDINE, (et. al.),	)	
	)	CASE NO(S). 2019-1117
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BRANDY BANKS, MEGHAN BANKS LARRICK, & AMY BANKS SANDINE
Represented by:
ROBERT K. DANZINGER
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, September 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter because appellants failed to file notice of the appeal with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory

transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GRAVIN PROPERTIES LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-564 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GRAVIN PROPERTIES LLC
Represented by:
ERIKA LEVINE
GRAVIN PROPERTIES LLC
253 NORTH ARDMORE ROAD
COLUMBUS, OH 43209

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, September 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-088586-00, 010-088839-00, 010-091156-00, 010-091248-00, and 010-091274-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject properties are single family homes utilized by appellant as residential rental properties. The auditor initially assessed the subjects' values at $69,800, $53,700, $83,000, $41,100, and $53,200, respectively. Appellant filed a complaint with the BOR seeking reductions in value to $42,000, $36,250, $42,000, $38,000, and $39,000, respectively. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's values. At the BOR hearing, Erika Levine appeared on behalf of appellant, arguing that the value of the properties increased too drastically during the countywide reappraisal. Levine asserted that the rent that appellant is able to charge for the properties has not increased at the same rate as the assessed values and that no physical improvements have been made to the properties. Levine also submitted a list of sales of properties in the area, extracting the average price per square foot and applying that the square footage of each subject property. The BOE argued that this was an improper methodology because the sales were not adjusted and Levine had no personal knowledge of those transactions. Following the hearing, the BOR considered the evidence and noted that the auditor had performed an income approach based on the information provided during the hearing and determined that it substantiated the initially assessed values. The BOR then issued a decision retaining the auditor's values, which appellant appealed to this board.

At the hearing before this board, Levine again appeared to testify on behalf of appellant in support of the requested reductions. Levine indicated that appellant had no additional evidence on three of the properties and relied on the information provided to the BOR. For the other two properties, however, appellant obtained appraisal reports that opined the value of parcel numbers 010-088586-00 and 010-091156-00 were each $50,000 as of January 1, 2017.

The BOE objected to these appraisals and argued that they should be excluded from the record. The BOE noted that the most recent sale of any of the subject properties was in 2013, which it asserted was too remote from the tax lien date to provide reliable evidence of value.

In the present appeal, appellant's burden was to come forward with evidence not only to show that the auditor's value is incorrect, but also to establish that its proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, which may be in the form of a non-expert owner's opinion of value. Id. at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms its basis fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

At the outset, we agree with the BOE that the appraisals should not be given any weight in this board's value determination. Not only did appellant fail to timely disclose its attempt to offer them, but also more importantly, they were presented without testimony from their author and lack the necessary indicia of reliability required. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21 ("*Team Rentals*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. The appraisal of real property is not an exact science and is instead simply an opinion, the reliability of which depends upon the basic competence, skill, and ability demonstrated by the appraiser. *In re Houston*, 12th Dist. Madison

No. CA2004-01-003, 2004-Ohio-5091; *Akron Natl. Bank & Trust Co. v. Freed & Co.*, 9th Dist. Medina No. 957 (Aug. 20, 1980) unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

Even without testimony from the author, where an appraisal contains sufficient indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. In addition to the absence of direct testimony about the preparation of the appraisal, unlike the appraisal in *Team Rentals*, there is no evidence that any individual or entity has relied on the appraisal to establish the subject's value. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). With unanswered questions about the appraiser's qualifications and inability to inquire regarding the support for his conclusions, we are unable to rely on any aspect of his reports.

Additionally, we find that the comparable sales information submitted by appellant does not establish the further reduced value that it seeks. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the list of sales appellant provided to the BOR is not probative evidence of value because Levine has not shown any knowledge about the circumstances of those sales or adjusted them for differences among the properties. *Schutz*, supra, at ¶16.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustments to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the

board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2017, were as follows:

PARCEL NUMBER 010-088586-00

TRUE VALUE $69,800

TAXABLE VALUE $24,430

PARCEL NUMBER 010-088839-00

TRUE VALUE $53,700

TAXABLE VALUE $18,800

PARCEL NUMBER 010-091156-00

TRUE VALUE $83,000

TAXABLE VALUE $29,050

PARCEL NUMBER 010-091248-00

TRUE VALUE $41,100

TAXABLE VALUE $14,390

PARCEL NUMBER 010-091274-00

TRUE VALUE $53,200

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-615, 2017-616, 2017-668, 2017-669 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

JOHN J. GALLICK
8121 OREGON ROAD
CANAL WINCHESTER, OH 43110

Entered Monday, September 9, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The board of education ("BOE") and property owner appeal decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 010-294091-00 and 010-294094-00, for tax year 2016. We proceed to consider these matters based upon the notices of appeal, statutory transcripts certified pursuant to R.C. 5717.01, and record of this board's hearing.

[2] The county auditor initially valued each of the subject properties, both of which were

12-unit apartment buildings, at $150,000. The property owner filed separate complaints with the BOR, which requested that each of the subject properties be revalued at $60,000. The complaints alleged that each parcel had been the subject of a separate $60,000 arm's-length transfer in July 2012. The BOE filed countercomplaints, which objected to the requests.

[3] The BOR held a consolidated hearing on the matters. As the hearing commenced, the BOE moved to dismiss the property owner's complaints, alleged that he had filed prior complaints that challenged the subject properties' values within the same triennial period, i.e., 2014, 2015, and 2016. The BOR did not rule on the motion and proceeded with the hearing. The property owner testified as to the character and condition of the subject properties and of the neighborhood in which they were situsted to argue that the subject properties' values should be reduced consistent with the $120,000 total price ($60,000 for each parcel) at which he purchased them in July 2012. He testified that each of the subject parcels had been combined from multiple separately numbered condominium parcels. In support of his testimony, he submitted a prior BTA decision related to the subject properties' values for tax years 2014 and 2015, in their prior iteration as separately parceled condominium units, and the sales of other properties that he owned in the general vicinity of the subject properties, to argue that the subject properties' values should be reduced consistent with his requests. One of the BOR members asked the property owner about the subject properties' monthly rental incomes and vacancy/occupancy rates. The BOE argued that the property owner's arguments and evidence were unpersuasive because the sale of the subject properties was too remote to the tax lien date and because unadjusted comparable sales are insufficient basis to reduce real property value.

[4] At the BOR decision hearing, the BOR members denied the BOE's motion to dismiss because of a "parcel change." Statutory Transcript ("S.T.") at BOR Decision Audio. After

reviewing the evidence presented by the property owner, the BOR gave most weight to his list of unadjusted comparable sales, properties which the property owner also owned. Specifically, the BOR accepted the $8,000 per unit value of the 4-unit property located at 1817 Lockburne Road that sold for $32,000 in August 2015. The BOR voted to reduce each of the subject properties' values to $96,000, i.e., $8,000 multiplied by the 12 units in each apartment building, and subsequently issued written decisions to that effect and both the BOE and property owner appealed to this board.

[5] These matters were stayed for a time, pending the outcome of related matters in the Tenth District Court of Appeals, case numbers 17-AP-000018 and 17-AP-000019.

[6] This board held a consolidated hearing on these matters, at which the BOE and property owner appeared. The BOE argued that the BOR impermissibly reduced the subject properties' values based upon unadjusted comparable sales data. The property owner expanded upon, or reiterated, the testimony provided at the BOR. In support of his testimony, the property owner attempted to submit comparable sales data and a newspaper article; the BOE objected because such information was not disclosed according to Ohio Adm. Code 5717-1-07(A)(2)(e), because such information was not first submitted to the BOR as required by R.C. 5715.19(G), and because such information amounted to hearsay. The attorney examiner sustained the objection as to the newspaper article but deferred ruling as to the comparable sales data. We find merit with the BOE's objection and hereby sustain the objection.

[7] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School*

Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[8] The record is clear that the property owner relied upon his $120,000 purchase of the subject properties from GoldInvest, LLC in July 2012 and the Supreme Court's decision in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, as the basis of his underlying complaint and cross-appeals. In *Akron City*, the court held "that a sale that occurred more than 24 months before the lien date and that is reflected in the property record maintained by the county auditor or fiscal officer should not be presumed to be recent when a different value has been determined for that lien date ***." Id. At 26. The court placed the burden on the proponent of a remote sale to "come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." Id. Here, the subject sale is presumed not to be recent because it occurred more than 24 months before the tax lien date of January 1, 2016. It is equally clear that the property owner believed that he carried the burden to provide evidence demonstrating no change in market conditions, or to the subject properties, between the sale and tax lien dates. We disagree. Though the property owner provided unadjusted comparable sales data, he failed to provide evidence of market conditions at the time of the $120,000 sale in July 2012, and intervening years between the sale and tax lien dates, or a paired sales analysis, such that this board could conclude that market conditions were similar or remained stable. See, *Financial Wealth Assoc. LLC v. Cuyahoga Cty. Bd. of Revision* (Oct. 19, 2017), BTA No. 2016-2151, unreported at 3 ("The property owner could have provided an appraisal report with a paired sales analysis to demonstrate *** market conditions. See e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 1, 2014), BTA No. 2011-2227,unreported, *aff'd* 2016-Ohio-757."). We note that,

at the BOR hearing, the property owner conceded that the real estate market in the neighborhood had worsened; thus, it seems that the property owner implicitly acknowledges that the sale in July 2012 may not be reflective of the subject properties' values on tax lien date. Furthermore, the record is devoid of any competent, credible, and probative evidence that compared/contrasted the condition of the subject properties at the time of the subject sale and on the tax lien date. We note that an argument could be made that each of the subject properties underwent a material change from separately parceled units into one parcel each. See, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375 (the court concluded that the BOR and this board committed legal error by accepting an appraisal report that valued separately parceled condominium units as one economic unit, an apartment complex). As such, we cannot confirm that the subject properties did not experience any condition changes between the sale and tax lien dates. We therefore find the 2012 sales are not recent to tax lien date.

[9] We also do not find the property owner's unadjusted comparable sales to be particularly competent, credible, and probative. We have repeatedly held that information of this type is an insufficient basis to determine real property value because it fails to adequately to consider and to account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. Here, there was no attempt to adjust the comparable properties to account for any differences with the subject properties. See generally The Appraisal of Real Estate (14th Ed.2013). For example, the property owner provided information about the $25,000 transfer of 951-957 East Mound Street, a 4-unit building, in August 2010. However, there was no effort to make this sale relevant to the subject properties, 12-unit buildings, and to the tax lien date, January 1, 2016, nearly six years later. See *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot

cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."). See also *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

[10] We note that the property owner submitted a magazine article, at the BOR hearing, to demonstrate the crime and drug infested nature of the subject properties' neighborhoods. We do not find the such information to be competent, credible, or probative evidence of the subject properties' values. Stories appearing in newspapers, magazines, or on the Internet which are submitted by a party in an effort to prove the truth or accuracy of a claimed condition or position, i.e., that the subject properties were located in a high-crime area, while self-authenticating, see Evid.R. 902(6), constitute hearsay, and may be objected to by an opposing party, Evid.R. 802, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, and/or found not sufficiently reliable by the trier of fact. It is clear that the magazine article was offered for the truth of the matter asserted, See, e.g., *Dellick v. Eaton Corp*., 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). In this matter, the author of the magazine article failed to testify testified at any of the hearings. We must, therefore, conclude that the magazine article constitutes unreliable hearsay, which is not competent, credible, and probative evidence of the subject properties' values.

[11] Similarly, we do not find the defects of the subject properties', i.e., their location in a high crime areas, necessitates reduction to the subject properties' values. The property owner

failed to provide evidence to quantify the specific diminution in value that resulted from thedefects. See *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649,2015-Ohio-4385, at ¶7 ("There was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation." This board has repeatedly rejected the argument that defects, unquantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. As just one example, a review of the BOR hearing record reveals that the property owner testified to the *dissimilarity* between the subject properties and the unadjusted comparable sales data that he provided. He specifically testified that the comparable sales were nicer than the subject properties and that some of the comparable sales had a different unit mix than the subject properties. S.T. at BOR Hearing Audio. Furthermore, even if we accepted the property owner's argument that the opioid crisis required a reduction to subject properties' values, the record is devoid of any evidence to support a reduction *to a specific value* including the sale price of July 2012. We acknowledge that the property owner argued that the subject properties should be valued at $60,000, consistent with a prior decision from this board. The Supreme Court has previously held that each tax year stands alone, and the fact that value may have been modified in another year is not competent and probative evidence that a different year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997).

[12] We note that we are unable to determine the subject properties' values based upon the income and vacancy/occupancy rates testified to by the property owner. The record is devoid of any market driven information that would allow this board to determine the subject properties'

values based upon an income approach to valuing real property. See *Schroyer v. Mercer Cty. Bd. of Revision* (Apr. 8, 2019), BTA No. 2018-1273, unreported at 2-3 ("[A]ppellants offered documents to show how much, or little, appellant profits from ownership of the subject. While that data could be relevant for an income capitalization appraisal, appellant's data alone is not competent evidence of value. *** Here, that complex calculation cannot be completed with appellant's evidence alone. As the Supreme Court explained in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996), an appraiser must determine whether a property's actual income and expenses conform to the market before relying on such information to opine value.")

[13] On appeal, we must conclude that the property owner did not present competent, credible, and probative evidence of the subject properties' values before the BOR and before this board. As a consequence, the county auditor need not prove the accuracy of the subject properties' initially assessed values.

[14] Now that we have concluded that property owner failed to submit sufficient evidence to demonstrate that the subject properties' values should be reduced consistent with his requests, we now consider the propriety of the BOR's decisions. See *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶15 ("It is clear from the BTA's decision that it failed to conduct an independent review of the evidence to determine the value of the subject property. *** Instead, the BTA merely deferred to the BOR, treating the BOR's assignment of value as presumptively valid." (Citation omitted.). As noted above, the BOR issued decisions that reduced each of the subject properties' values to $96,000 based upon the per unit price of an unadjusted comparable sale located at 1817 Lockburne Road, i.e., the $8,000 per unit value of the 4-unit comparable property that sold for $32,000 in August 2015. There is no indication that the BOR adjusted this sale to make it truly comparable to the subject properties, particularly given the property owner's concessions that this property was

dissimilar to the subject properties. See, infra. We must find, therefore, that the BOR erred when it decided to reduce the subject properties values.

[15] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we are constrained to conclude that the property owner failed to provide competent, credible, and probative evidence of the subject properties' values before the BOR and before this board. While we recognize that the property owner is an expert in the subject properties, we do not find his evidence to be sufficient basis to reduce the subject properties' values. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588. Furthermore, because we find insufficient evidence to support the BOR's decisions to reduce each of the subject properties' values to $96,000, we are forced to conclude that the BOR's decisions are unsupported. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 543, 2018-Ohio-918, at ¶13, citing *City of Columbus Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375, at ¶¶16-17. See also *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 148 Ohio St.3d 695, 2016-Ohio-8332. We accordingly reinstate the subject properties' initially assessed values. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381.

[16] It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2016:

PARCEL NUMBER 010-294091-00

TRUE VALUE: $150,000

TAXABLE VALUE: $52,500

PARCEL NUMBER 010-294094-00

TRUE VALUE: $150,000

TAXABLE VALUE: $52,500

OHIO BOARD OF TAX APPEALS

JOE MCMAHON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1231
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOE MCMAHON
Represented by:
JOSEPH MCMAHON
OWNER
3433 W. 95TH STREET
CLEVELAND, OH 44102

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, September 10, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the BOR *within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of the appeal was filed with this board and with the BOR thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SHEFFIELD CROSSING STATION, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-926 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHEFFIELD CROSSING STATION, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

SHEFFIELD-SHEFFIELD LAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
CHRISTIAN M. WILLIAMS
ATTORNEY AT LAW
PEPPLE & WAGGONER, LTD.
CROWN CENTRE BUILDING
5005 ROCKSIDE ROAD, SUITE 260
CLEVELAND, OH 44131-6808

Entered Tuesday, September 10, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Sheffield Crossing Station LLC ("Sheffield Crossing") appeals from a decision of the Lorain County Board of Revision ("BOR") valuing the subject property for tax year 2017. We now decide the case on the notice of appeal, the statutory transcript, this board's hearing record

("H.R."), the parties' exhibits, and the parties' written arguments.

The subject property is a shopping center anchored by a Giant Eagle. The subject sold on December 23, 2015 for $16,095,000. The record shows a company called Sheffield Ridge Equities LLC sold the subject property—ten parcels in total—to Sheffield Crossing via limited warranty deed, and the deed was recorded on December 23, 2015. The parcel card confirms general sale information, including a sale price of $16,095,000. The parties do not dispute the sale date or sale price. Compare Sheffield Crossing Br. at 1 with BOR Br. at 2.

The auditor valued the subject property at approximately $13,693,350 for tax year 2017. Sheffield Crossing filed a decrease complaint with an opinion of value at $11,950,000, and the appellee school board filed a counter-complaint asking the subject to be valued in accordance with the December 2015 sale. Sheffield Crossing did not appear at the BOR hearing but did submit an appraisal developed by Richard G. Racek, Jr., MAI, which valued the property at $11,950,000 as of January 1, 2015. The school board objected to the appraisal since the appraisal was for a different tax-lien date and because Mr. Racek did not appear to authenticate the appraisal. The school board instead relied on the information contained in the sale documents and asked the BOR to value the subject in accordance with the sale. The BOR agreed with the school board and ultimately did value the subject in accordance with the sale.

Sheffield Crossing appealed to this board. At this board's evidentiary hearing, Sheffield Crossing offered the appraisal and testimony of Mr. Racek who valued the subject (in a new appraisal) at $11,250,000 as of January 1, 2017. The BOR offered the appraisal and testimony of Thomas D. Sprout, MAI, who valued the subject at $17,655,000 as of January 1, 2017. No party offered testimony from a person with actual knowledge of the December 2015 sale.

Mr. Racek valued the subject at $11,250,000 using the sales comparison and income

capitalization approach. He found the subject's highest and best use was for continued use as a commercial shopping center, although he noted the property suffers from some obsolescence. For his sales comparison approach, he utilized seven shopping center sales, which sold for between $46.50 and $136.16 per square foot. He then made various adjustments to account for the differences between the subject and the comparables, e.g., size, location, character. Mr. Racek then concluded to a value of $100 per square foot or $11,368,800. Mr. Racek later developed his income approach using 21 lease comparables—some net, some gross. He concluded gross potential income for the subject to be $1,020,174. After accounting for vacancy, credit loss, operating expenses, and reserves, he calculated a net operating income figure of $891,857. Capitalized at 8%, Mr. Racek's income approach came to $11,150,000 rounded. He reconciled both approaches to a value of $11,250,000 as of the tax-lien date.

Mr. Sprout valued the subject at a combined $17,655,000 using the sales comparison and income capitalization approaches. For his sales comparison approach, Mr. Sprout segregated the shopping center into smaller subunits, e.g., the anchor, the in-line retail space, a Cracker Barrel, an Arby's, a BP, an auto service garage. He then compared each subunit using comparable properties. He followed a similar method in his income approach and reconciled each individually.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has been clear "the best evidence of the 'true value in money' of real

property is an actual, recent sale of the property in an arm's-length transaction." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶¶ 31-34 (quoting *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129). A qualifying sale—an arm's-length and recent sale—"creates a rebuttable presumption that the sale price reflected true value." Id. at ¶ 33. A sale is presumed recent if it occurred less than 24 months prior to the tax-lien date. See *Lone Star Steakhouse & Saloon of Ohio v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶¶ 12-14.

The party relying on a sale can satisfy their initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. The proponent bears a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id.at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with purchase documents, and no corroborating testimony is always necessary. *Lunn* at ¶ 14. Once the proponent presents a facially valid sale, the burden shifts to the opposing parties to rebut the sale. Here, the school board has presented a facially valid and recent sale, and no party disputes the basic facts of that sale, e.g., sale price, grantor, grantee, sale date. Accordingly, the burden shifts to Sheffield Crossing to rebut that presumption. See *Lone Star* at ¶ 35; *Terraza 8* at ¶¶ 35-37. However, Sheffield Crossing presented almost no actual evidence about the sale at this board's hearing. It also largely omitted discussion of the sale in its briefs; it focused instead on the appraisals.

Regardless, as a result of a legislative change to R.C. 5713.03 and the Ohio Supreme Court's *Terraza 8* decision, this board must look to appraisal or other evidence of value in

addition to any qualifying sales. However, a sale remains the best evidence of value. Id.; see also *Menlo Realty Income Properties 28, LLC v. Franklin Cty. Bd. of Revision* (Apr. 15, 2019), BTA No. 2016-445, unreported. We have reviewed the appraisals in this case, but find the sale to be better, more persuasive, evidence of value for the following reasons.

First, we find no credible evidence to show the December 2015 sale was anything but arm's-length. Although the subject was allegedly sold as part of a portfolio sale, no party presented evidence from any person with actual knowledge of the sale; therefore, the sale created a rebuttable presumption of value in favor of the sale price. Second, while Sheffield Crossing argues the sale should be rejected because the sale was for a fee simple estate subject to an existing lease, the record is clear the sale price and the existing lease rates were in line with market rates. As we noted recently in *Harrah's Ohio Acquisition Co. v. Cuyahoga Cty. Bd. of Revision* (June 7, 2019), BTA No. 2014-4596, unreported, and in *Spirit Master Funding IX, LLC v. Cuyahoga Cty. Bd. of Revision* (June 8, 2018), BTA No. 2017-73, unreported, a fee simple sale subject to a lease does not disqualify a sale unless the lease is above market. We note Sheffield Crossing primarily focuses on the Giant Eagle lease in its brief. However, Mr. Sprout's lease comparables show the Giant Eagle lease was not above market. We also note the record indicates the subject (meaning the entire shopping center) sold for approximately $141 per square foot. That is only slightly higher than Mr. Racek's sale comparable number 4.

Ultimately, this case boils down to the fact that the sale is more persuasive evidence of value. The only evidence in the record suggests the sale price was market driven. By contrast, this board has repeatedly acknowledged "the appraisal of real property is not an exact science, but is instead an opinion." *Snyder v. Hamilton Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-6, unreported. The appraisal process requires a wide variety of subjective judgments about

underlying data. Here, two MAI appraisers developed very different appraisals using different methodologies. One came to an opinion of value below the sale. One came to an opinion of value above the sale. However, both appraisals contain raw data that suggests to this board that the sale was in accord with the market.

We are further compelled to find the sale is the best evidence of value because both appraisals have features that make them less persuasive than the sale. For example, Mr. Racek valued the property using a definition of encumbrance that this board and the Ohio Supreme Court have rejected. Sheffield Crossing argues R.C. 5713.03 required Mr. Racek "to value the property not as if it were leased as of January 1, 2017, but as if the property were available to be leased on that date." Appellant's Br. at 2. As this board noted in *Lowe's Home Centers v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported, the Ohio Supreme Court rejected such argument in *Harrah's Ohio Acquisition Co., LLC v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370. While Mr. Sprout did not assume property must be vacant or available on the tax-lien date, this board is unable to find the sale should be disregarded simply to value the property as separate components, especially given that the property did sell, as one unit, recent to tax lien date.

For these reasons, we order the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 03-00-012-000-166

TRUE VALUE

$684,620

TAXABLE VALUE

$239,620

PARCEL NUMBER 03-00-012-000-168

TRUE VALUE

$33,100

TAXABLE VALUE

$11,590

PARCEL NUMBER 03-00-012-000-169

TRUE VALUE

$84,840

TAXABLE VALUE

$29,700

PARCEL NUMBER 03-00-012-000-170

TRUE VALUE

$772,220

TAXABLE VALUE

$270,277

PARCEL NUMBER 03-00-012-000-172

TRUE VALUE

$31,990

TAXABLE VALUE

$11,200

PARCEL NUMBER 03-00-012-000-173

TRUE VALUE

$891,660
TAXABLE VALUE

$312,080

PARCEL NUMBER 03-00-012-000-174

TRUE VALUE

$1,282,800

TAXABLE VALUE

$448,980

PARCEL NUMBER 03-00-012-000-177

TRUE VALUE

$2,344,180

TAXABLE VALUE

$820,460

PARCEL NUMBER 03-00-012-000-182

TRUE VALUE

$9,954,770

TAXABLE VALUE

$3,484,170

PARCEL NUMBER 03-00-012-000-184

TRUE VALUE

$14,870

TAXABLE VALUE

$5,200

OHIO BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, INC., LOWE'S HOME CENTERS, LLC, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2014-4606
vs.	)	(REAL PROPERTY TAX)
WASHINGTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LOWE'S HOME CENTERS, INC., LOWE'S HOME CENTERS, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - WASHINGTON COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, September 10, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is before the Board of Tax Appeals upon remand from the Supreme Court of Ohio, which issued a decision and judgment entry in *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, 154 Ohio St.3d 463, 2018-Ohio-1974 ("*Lowe's II*"), that vacated this board's December 3, 2015 decision and order and held that we erred by failing to evaluate and weigh the property rights adjustments performed by the county appellees' appraiser, Thomas D. Sprout. Id. at ¶38. In doing so, the court remanded this matter for additional analysis consistent with newly-decided (at the time) and subsequent Supreme Court case law, i.e., *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, 145 Ohio St.3d 375, 2016-Ohio-372 ("*Lowe's I*")

; Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision, 146 Ohio St.3d 173, 2016-Ohio-371; *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836.

The property owner appeals a decision of the board of revision ("BOR") which determined the value of the subject property, parcel numbers 23-0084565.001, 24-0084563.001, 24-0084566.001, 24-0084566.004 and 24-0084570.002, for tax year 2013. This matter is now considered upon the notice of appeal, statutory transcript certified by the BOR pursuant to R.C. 5717.01, record developed at this board's hearing, and post-hearing briefs.

The subject property comprises a "big box," home improvement retail store and was initially assessed a combined true value of $9,595,570. The property owner filed a complaint with the BOR, which requested that the subject property be valued at $5,700,000. At the hearing before the BOR, the property owner submitted the appraisal report and testimony of appraiser Richard G. Racek, Jr., who opined the subject property's value to be $5,700,000 as of January 1, 2013. Racek was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. During the BOR decision hearing, a technical advisor raised several issues with the appraisal report and recommended that the BOR retain the subject property's initially assessed value, which the BOR accepted. The BOR subsequently issued a written decision to that effect and this appeal ensued.

At the hearing before this board, both parties were represented by counsel who submitted additional evidence and argument into the record. The county appellees submitted the appraisal report and testimony of Sprout, who opined the subject property's value to be $8,800,000 as of January 1, 2013. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. He also testified as to

his review of Racek's appraisal report, specifically what he regarded as shortcomings of such report, to which the property owner objected. The attorney examiner deferred ruling on the objection and allowed such testimony to be proffered into evidence.

After the hearing, the parties submitted written argument to more fully argue their respective positions. The property owner argued that Sprout's selection of comparable properties and definition of the subject property's location resulted in a higher valuation and, as a result, further argued that this board should rely on Racek's appraisal report to determine the subject property's value. The county appellees conversely argued that Sprout's appraisal report was supported by the appropriate adjustments, as well as case law. It should be noted that, on remand from the court, none of the parties submitted additional written argument.

Before we consider the merits of this appeal, we must first dispose of two preliminary issues. First, as noted above, at this board's hearing, the attorney examiner deferred ruling on the property owner's objection to Sprout's appraisal review testimony. Upon review, the objection is now overruled. The record demonstrates that the county appellees properly disclosed Sprout as a witness. Furthermore, his testimony, as it relates to Sprout's review of Racek's report, was offered as rebuttal evidence.

Second, the property owner attached a document to its first post-hearing brief. Because the document was produced outside the hearing context, we cannot consider such evidence. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Bd. of Edn. of the South Euclid-Lyndhurst City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Oct. 28, 2008), BTA No. 2007-V-99, unreported. To the extent that the document was offered for the truth of the matter asserted, we further find such document to be unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.*, 5th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an

out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802.").

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' appraisal evidence.

As noted above, both the property owner and county appellees submitted appraisal evidence, which provide opinions of value as of the tax lien date, were prepared for tax valuation purposes, and attested to by qualified experts. We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

We begin our analysis with the property owner's appraisal performed by Racek. He

commenced his analysis by first determining that the subject property's highest and best use, as "vacant" and as "improved," would be retail. He developed two approaches to valuing real property, i.e., the sales comparison approach and the income approach. Under the sales comparison approach, Racek compared the subject property to nine comparable properties located throughout Ohio. Three of the nine comparable sales sold subject to leases, i.e., sale comparables 7, 8, and 9. After adjusting the comparable sales for any differences with the subject property, he concluded to an indicated value of $5,700,000 as of January 1, 2013. Under the income approach to value, Racek surveyed the market, relying upon twenty comparable properties that were leased or available to be leased located throughout Ohio, to determine market rental income of $4.00 per square foot, which he applied to the subject property's 142,446 square feet of rentable area. In doing so, he concluded to gross potential income of

$569,784, from which he deducted 5% ($28,489) for vacancy and credit loss, to conclude to effective gross income of $541,295. From that number, he deducted $87,462 for expenses and concluded to net operating income of $453,833, which he then capitalized at 8%, based primarily from sales used in the sales comparison approach. He concluded to an indicated value of $5,675,000 as of January 1, 2013. He reconciled the various approaches to value, placing the most weight on the value indicated by the income approach, to finally conclude the subject property's value to be $5,700,000 as of January 1, 2013.

We next consider the county appellees' appraisal performed by Sprout. He commenced his analysis by first determining that the subject property's highest and best use, as "vacant" and as "improved," would be for retail use. He developed two approaches to valuing real property, i.e., the sales comparison approach and the income approach. Under the sales comparison approach, Sprout compared the subject property to seven comparable properties located in

Northern Kentucky and Ohio. Five of the seven comparable sales sold subject to leases, i.e., sale comparables 1, 2, 3, 4, and 5. After adjusting the comparable sales for any differences with the subject property, he concluded to an indicated range in value between $8,550,000 and $9,250,000 as of January 1, 2013. Under the income approach to value, Sprout surveyed the market, relying upon eight comparable properties that were leased or available to be leased located throughout Ohio, to determine market rental income of $5.25 per square foot, which he applied to the subject property's 142,446 square feet of rentable area. He then concluded to gross potential income of $747,842, to which he added $305,691 for tenant reimbursements, to determine gross potential rent of $1,053,532. From that number, he deducted 4% ($42,141) for vacancy and credit loss, to conclude to effective gross income of $1,011,391. From that number, he deducted $341,302 for expenses and concluded to net operating income of $670,089, which he then capitalized at 9.19% and 9.44% (including a tax additur of 1.69%), based upon data from a national publication and sales of single user buildings similar in size to the building sitused on the subject property. He concluded to an indicated range in value between $8,770,000 and $8,900,000. He reconciled the various approaches to value, giving equal weight to the sales comparison and income approaches, to finally conclude the subject property's value to be $8,800,000 as of January 1, 2013.

As the court's decision in *Lowe's II* indicated, "a lease is an encumbrance and *** R.C. 5713.03's directive to value the realty 'as if unencumbered' means to value realty as if it were free of encumbrances such as leases." *Lowe's II*, at ¶ 19. The court relied on its decisions in *Steak 'n Shake, Rite Aid*, and *Lowe's I*, to reach such conclusion. Taken together, these cases (which the court referred to as the "trilogy" or "trilogy of decisions") require an appraiser to determine whether sales of properties that sold subject to leases reflect the market and, if not,

the appraiser must adjust such sales upward or downward to reflect the market. *Steak 'n Shake*, at ¶ 23 (an appraiser is "required to adjust the sale prices for his comparable properties to reflect the fact that the subject property was not encumbered ***."); *Rite Aid*, at ¶ 20 ("Precisely because the lease affects the sale price and value, the leased-fee comparable ought to be adjusted when the subject property has no lease; the adjustment would remove the effect of the lease on the sale price so that the sale can indicate what the unencumbered subject property would sell for."); *Lowe's I*, at ¶ 25 ("It is, however, true that the present property should be valued as if unencumbered by a lease, but that is because it was in fact unencumbered by a lease***. If the special-purpose doctrine does not apply, the value of any comparables that were subject to leases should be adjusted to achieve a true comparable for this subject property. ***. On the other hand, if the special-purpose doctrine does apply, it may be appropriate to use such comparables without adjustment.")

As we follow the court's direction, we note that this board previously determined that the subject property did not qualify as a special-purpose property, *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision* (June 10, 2016), BTA No. 2011-1664, unreported, and, as a result, the court determined that collateral estoppel applied when this matter was on appeal, *Lowe's II*, at ¶¶ 31-36. Therefore, we conclude that the subject property lacks unique features that would allow the appraisers to forego adjusting comparable sales that sold subject to above-market or below-market leases under the sales comparison approach. See *Lowe's I.* See also *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 154 Ohio St.3d 268, 2018-Ohio-4282.

Upon review of the evidence presented, we find Sprout's appraisal report to be the most competent and probative evidence of the subject property's value. As noted above, both

appraisers relied upon sales of properties that sold subject to leases in their sales comparison approaches to value. Both appraisers utilized qualitative adjustments, in narrative form, to explain their adjustment methodology. Both appraisers adjusted their selected comparable sales to reflect whether the underlying lease terms would be higher or lower than what the subject property could achieve. For example, for his sale comparable 7, Racek noted that "[t]his property sold subject to a lease with Kmart who was paying a higher rental rate than what the subject could support. However, since there was only five years left on the lease before option periods, this property developed a high capitalization rate for which an upward adjustment is appropriate." Statutory Transcript at Exhibit ("Ex.") F-Racek Appraisal Report at 40. In his sales comparison approach, Sprout noted that "[l]ease rates for Sales 2, 3, and 4 were higher than what we believe the subject property could achieve and would represent higher values. The lease rate for Sale 1 was lower than what we believe the subject property could achieve and would represent a lower value." Hearing Record at Ex. A-Sprout Appraisal Report at 30. It is at this point that the appraisers' methodologies diverged. According to Racek's appraisal report, he ended his analysis of the lease rates, of the comparable sale(s) that sold subject to leases, there, and failed to determine whether the lease rates were at above, at, or below market rates. Conversely, as part of a two-step analysis, Sprout also analyzed the lease rates and determined that they were, indeed, consistent with market rates. As such, we must find that Racek, not Sprout, failed to abide by the requirements of *Steak n' Shake* and *Rite Aid*.

To the extent that the property owner argued that any consideration of the income that could be generated from the subject property through a market lease is contrary to law, we disagree. The Supreme Court specifically rejected such argument in *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370, finding no

legal error in an appraiser valuing an owner-occupied property as if it were generating market rate income under a hypothetical lease:

> "We addressed the propriety of appraising owner-occupied property as if it were leased in *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, ***, ¶ 21-23. After recognizing that a property owner may be able to realize the value of its property by encumbering it with a lease, we concluded that an appraiser may take that possibility into account when valuing it. *Id.* at ¶ 23; ***. Appraising property in this way is consistent with R.C. 5713.03's directive to determine 'the true value of the fee simple estate, as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market. *See* Appraisal Institute, *The Appraisal of Real Estate* 441 (14th Ed.2013) ('When the fee simple interest is valued, the presumption is that the property is available to be leased at market rates'); Ohio Adm. Code 5703-25-07(D)(2) (authorizing use of income-capitalization approach in valuing real estate)." (Parallel citation omitted.) Id. at ¶ 27.

See also *Lowe's II*, supra, at ¶ 20 ("the language of R.C. 5713.03 applies to the valuation of the property itself -- it does not prescribe any standards to be applied in a comparable-sales analysis.").

Although the parties disagreed about the type and location of comparables properties, we find Sprout's inclusion of first-generation properties and build-to-suit properties subject to long-term leases was most appropriate given that the property owner-occupied the subject property as of the tax lien date. See *Johnston Coca-Cola Bottling Co. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870, ¶¶12-16 (an appraiser may consider the

present-use of a property but not to the exclusion of other market factors). The Sprout appraisal report demonstrates that there were first-generation sales in the market in which the subject operates and, therefore, there was no need for Racek to rely so heavily on second-generation sales to render an opinion on the subject property's value.

Furthermore, although the parties disputed whether the area in which the subject property was located could best be described as rural, semi-rural, or suburban, we find Sprout's testimony that the subject property's location is in a regional hub to be persuasive. He testified that the subject property was located close to an interstate and that it drew customers "from a large radius to the east, west and to the north." Hearing Record at 13. As such, we find that it was appropriate for Sprout to select the comparable properties and make the adjustments, as highlighted in his appraisal report.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn.*, supra, at 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find Sprout's appraisal report, which opined the value of the subject property to be $8,800,000, to be competent and probative and the best indication of the subject property's value as of the effective tax lien date. We will utilize the percentages reflected in the county auditor's initial values to allocate value between the parcels. See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

It is, therefore, the order of this board that the subject property's true and taxable values as of January 1, 2013 are as follows:

PARCEL NUMBER 23-0084565.001

TRUE VALUE: $132,610

TAXABLE VALUE: $46,410

PARCEL NUMBER 24-0084563.001

TRUE VALUE: $464,970 TAXABLE

VALUE: $162,740 PARCEL

NUMBER 24-0084566.001 TRUE

VALUE: $8,104,110 TAXABLE

VALUE: $2,836,440 PARCEL

NUMBER 24-0084566.004 TRUE

VALUE: $3,670

TAXABLE VALUE: $1,290 PARCEL

NUMBER 24-0084570.002 TRUE

VALUE: $94,640

TAXABLE VALUE: $33,120

OHIO BOARD OF TAX APPEALS

VENITA CHEATWOOD, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1066, 2019-1151 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VENITA CHEATWOOD
7301 OTIS CT
CLEVELAND, OH 44104

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, September 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not timely filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of

appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The records in these matters indicates that while appellant timely filed the appeals with this board, notices of the appeals were filed with the BOR thirty-seven days after the mailing of the BOR's decisions. Upon consideration of the existing record, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

PATRICIA BATTIES, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-587
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PATRICIA BATTIES
813 CARLYSLE STREET
AKRON, OH 44301

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Wednesday, September 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon two motions filed by the county appellees. In the first motion, the county appellees alleged that the appellant failed to file a copy of the notice of appeal with this board and county board of revision ("BOR") within the timeframe to do so, as required by R.C. 5717.01 and, as a result, this board lacked the authority to consider the merits of this appeal. On behalf of the appellant, Marvin Parms filed a written response, which advanced legal argument, requesting that the motion to dismiss be denied. The county appellees subsequently filed a motion to strike Parms' response, asserting that he was not an attorney and, therefore, barred from advancing legal argument on behalf of the appellant. The appellant did not respond to the motion to strike.

As an initial matter, there is no indication that Marvin Parms is an attorney licensed to practice law in Ohio. It appears, therefore, that he has engaged in the unauthorized practice of law by attempting to represent the appellant in this matter, i.e., engaging in motion practice. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, at ¶19, fn.2 ("We also note that Megaland's brief was submitted and signed by Normann Rafizadeh, who is not an attorney licensed to practice law in the state of Ohio. With certain exceptions not applicable here, a non-attorney who prepares legal papers to be filed in court on behalf of a corporate entity such as a limited liability company engages in the unauthorized practice of law. *Disciplinary Counsel v. Kafele*, 108 Ohio St.3d 283, 2006-Ohio-904, ***, ¶ 14-15. Accordingly, we sua sponte strike Megaland's brief from the record and admonish Mr. Rafizadeh to desist from any further unauthorized practice of law." (Parallel citation omitted.)); Ohio Adm. Code 5717-1-02(B) ("Any non-attorney acting on behalf of a party may not make legal argument, examine witnesses, or undertake any other tasks that can be performed only by an attorney."). Therefore, we grant the county appellees' motion to strike.

We proceed to consider the county appellees' motion to dismiss, which is premised upon the relevant portions of R.C. 5717.01 that allow for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the board of revision *within thirty days* after notice of the decision of the county board of revision is mailed. See, also, R.C. 5715.20. See, e.g., *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990) ("Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal."). Here, the statutory transcript indicates that the BOR mailed its decision to the appellant on April 12, 2019.

As such, the appellant had until May 13, 2019 to file notice of the appeal with this board and with the BOR. (We note that the thirtieth day, May 12, 2019, fell on a Sunday and, therefore, the appellant had until the next business to day to file the notices of appeal.) Unfortunately, the appellant filed her notice of appeal thirty-five days after the BOR decision was mailed.

Based upon the foregoing, we must conclude that that this board lacks jurisdiction to consider this matter. As a consequence, we grant the county appellees' motion to dismiss.

OHIO BOARD OF TAX APPEALS

OSPREY INC., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-400
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - OSPREY INC.
Represented by:
JOEL S. PIZZUTI
629 N. HIGH ST., SUITE 500
COLUMBUS, OH 43215

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Wednesday, September 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Osprey, Inc., appeals from a decision of the Franklin County Board of Revision ("BOR") denying an owner-occupancy reduction for parcel 010-262391 for tax years 2017 and 2018. No hearing was requested, and no party filed written argument in support of their position. We now decide the case on the notice of appeal and the statutory transcript.

[2] R.C. 323.152(B) "provides a 2.5% reduction in the taxes levied on any homestead[.]"*Placek v. Cuyahoga Cty. Bd. of Revision* (Sept. 10, 2018), BTA No. 2018-84, unreported. To qualify, the owner must show the property is the owner's "homestead," meaning a "dwelling***owned and occupied as a home by an individual whose domicile is in this state." R.C. 323.151 (defining "homestead"); *State ex rel. Swetland v. Kinney*, 62 Ohio St.2d 23, 28-30 (upholding the constitutionality of the reduction).

[3] Joel Pizzuti filed a reduction complaint stating: "The owner listed on the county records, Osprey, Inc., is a nominee for the real owner, Joel S. Pizzuti. An agreement is in place and is included with this form." Both the auditor and the BOR rejected the application. Of note, the BOR scheduled a hearing, but no party appeared for that hearing. The transcript indicates the BOR denied the rejection primarily because it found insufficient evidence about who occupied the property and how it was used. A trust agreement and conveyance fee statement from 2011 are included in the transcript and are referenced in the BOR notes. It appears Osprey is the trustee of the property. Mr. Pizzuti appealed to this board on behalf of Osprey but did not request a hearing or file written argument.

[4] After reviewing the record, we too find a lack of credible evidence to show how the property is used, i.e., whether it is used as a primary residence and by whom. R.C. 323.151; *Nancy Engel Settlor v. Fairfield Cty. Bd. of Revision* (Feb. 5, 2015), BTA No. 2012-1143, unreported (noting a property can still qualify as a "homestead" under certain conditions even when a trust holds the title); 2007 Ohio Atty.Gen.Ops. No. 2007-21. No party appeared at the BOR hearing, and no party requesting a hearing with this board. The record is devoid of information about when Mr. Pizzuti (or anyone else) started living on the property; where Mr. Pizzuti is domiciled; or if any other parties reside on the property. Without that necessary information to establish use, we cannot determine the property is a "homestead," which is a requirement for the owner-occupied reduction to apply.

For these reasons, we deny the requested reduction.

OHIO BOARD OF TAX APPEALS

FOREST EDGE LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2017-1370
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HANCOCK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - FOREST EDGE LLC
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - HANCOCK COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

CORY-RAWSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
JENNIFER STIFF TOMLIN
SCOTT SCRIVEN LLP
250 EAST BROAD STREET, SUITE 900
COLUMBUS, OH 43215

Entered Wednesday, September 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property for tax year 2016. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and post-hearing briefs filed by the parties.

The subject property, 36 single-family homes (14 three-bedroom homes and 22

four-bedroom homes) and a community building ,operated as one economic unit, were initially assessed a combined true value of $2,016,370. The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced to $1,450,000. The affected board of education ("BOE") filed a countercomplaint, which objected to the request.

At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. The property owner argued that the subject property participated in the Low-Income Housing Tax Credit ("LIHTC") program and submitted the testimony of James Zambori to detail how the LIHTC program worked. In support of the complaint, the property owner submitted a packet of documents entitled "Owner's Opinion of Value" in support of the complaint. Based upon its presentation, the property owner amended its opinion of value to $1,550,000. The BOE cross-examined Zambori. The BOR subsequently voted to retain the subject property's initially assessed value and issued a written decision to that effect. This appeal ensued.

At this board's hearing, the property owner, county appellees, and BOE appeared through counsel to supplement the record. The property owner submitted the appraisal report and testimony of appraiser Richard G. Racek, Jr., who opined the value of the subject property to be $1,570,000 as of the tax lien date. Racek was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. The county appellees and BOE jointly submitted the appraisal report and testimony of appraiser Thomas D. Sprout, who opined the value of the subject property to be $2,330,000 as of the tax lien date. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. The parties jointly submitted the consolidated hearing record from unaffiliated appeals, *Frank Cook Senior Housing, LP v. Muskingum Cty. Bd. of Revision* (May

13, 2019), BTA No. 2017-1043 et al., unreported, given the similarities of the issues, i.e., the proper appraisal methodology to use when valuing LIHTC property.

Subsequent to the hearing, the parties submitted written argument to more fully assert their respective positions. Later, while this matter was pending for decision, the property owner submitted recent decisions from this board, involving LIHTC property, as additional authority for its position.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

In his appraisal report, Racek first determined that the subject property's highest and best use, "as vacant" and "as improved," was for affordable housing. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of a large amount of economic obsolescence and that the sales comparison approach to valuing real property would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach to valuing real property. In doing so, he relied upon six comparable LIHTC properties to determine the following LIHTC monthly rental rates: $412, $670, or $700 for the three-bedroom homes and $730 and $745 for the four-bedroom homes, depending on the adjusted median gross income

(more commonly referred to as "AMGI"). He then applied those rental rates to the subject property's 36 homes, to conclude total gross potential income of $305,568. From that number, he deducted 12% for vacancy and credit loss, based upon the subject property's historical performance and market information, and then added $7,500 of additional income from sources other than rent. Next, he concluded to effective gross income of $276,400. From that number, he deducted total expenses of $131,400, to conclude to net operating income of $145,000. He capitalized the net operating income at 9.18% (which included a 1.18% tax additur to account for property taxes) to preliminarily conclude to a value of $1,579,521. He deducted $9,000 to account for appliances in each of the 36 homes. Based upon this analysis, he finally concluded the subject property's value to be $1,570,000 (rounded) as of January 1, 2016.

In his appraisal report, Sprout first determined that the subject property's highest and best use, "as vacant" and "as improved," "would be multi-family for residential development that is subsidized by tax credits." Hearing Record at Sprout Appraisal Report at 30. However, he noted that if the subject property's 36 homes were not part of the LIHTC program, their highest and best use, "as improved," would be to sell them to owner-users. Like Racek, Sprout determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of a large amount of economic obsolescence and that the sales comparison approach to valuing real property would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach to valuing real property. In doing so, he relied upon conventional, market rate single-family homes, in the residential rental market, to determine a conventional market rent of $700 per month for the three-bedroom homes and $825 per month for the four-bedroom homes. He then applied those rental rates to the subject property's 36 homes, to conclude total gross potential

income of $338,400. From that number, he deducted 6% for vacancy and credit loss, based upon a published market survey and added $1,800 of additional income from sources other than rent. Next, he concluded to effective gross income of $319,896. From that number, he deducted total expenses of $115,494, to conclude to net operating income of $204,402. He capitalized the net operating income at 8.68% (which included a 1.18% tax additur to account for property taxes) to preliminarily conclude to a value of $2,355,000. He deducted $25,000 to account for appliances in each of the 36 homes. Based upon this analysis, he finally concluded the subject property's value to be $2,330,000 (rounded) as of January 1, 2016.

We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. This board must weigh the appraisal reports and assess their credibility. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286.

We find our decision in *Abbey Church Village (TC2) Housing Limited Partnership v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported, to be instructive. There, we summed up the case law regarding the valuation of LIHTC properties as follows:

> In short, the case law is clear that when determining the value of a property that receives government subsidies, those subsidies should be disregarded to the

> extent that they provide an affirmative value above "market." The case law also establishes that restrictions imposed pursuant to the government's police powers, as is the case with the LIHTC property in the present appeal, must be considered. See, also, R.C. 5713.03 ("The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions ***." (Emphasis added.)).

Id. at 5. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254. See also *Frank Cook*, supra.

Based upon our review, we must conclude that Racek's appraisal report and testimony best estimates the subject property's value as of the tax lien date. The primary and most important difference between the appraisers' analyses is their consideration, or lack thereof, of the restrictive covenant that limits the use of the subject property as a low-income housing community and its target population to people with low incomes. Racek considered the restrictive covenant and relied upon LIHTC market (including the subject property's own experience in the LIHTC market) for his analysis. Sprout did not consider the restrictive covenant and relied upon the conventional market housing market for his analysis. As a result, we find that Sprout's appraisal report did not satisfy the requirement that LIHTC restrictions be considered when valuing real property, for property tax purposes, and, as a result, overvalued the subject property.

In reviewing this matter, we are mindful of our duty to independently determine the

subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that Racek's appraisal report and testimony provides the best evidence of the subject property's value, and allocate his total value in accordance with the auditor's initial values. See *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2016:

Parcel Number: 46-0001028689

True Value: $45,890

Taxable Value: $16,060

Parcel Number: 46-0001028690

True Value: $39,590

Taxable Value: $13,860

Parcel Number: 46-0001028691

True Value: $45,480

Taxable Value: $15,920

Parcel Number: 46-0001028692

True Value: $39,590

Taxable Value: $13,860

Parcel Number: 46-0001028693

True Value: $45,890

Taxable Value: $16,060

Parcel Number: 46-0001028694

True Value: $45,480

Taxable Value: $15,920

Parcel Number: 46-0001028695

True Value: $39,550

Taxable Value: $13,840

Parcel Number: 46-0001028696

True Value: $26,860

Taxable Value: $9,400

Parcel Number: 46-0001028697

True Value: $41,650

Taxable Value: $14,580

Parcel Number: 46-0001028698

True Value: $42,060

Taxable Value: $14,720

Parcel Number: 46-0001028699

True Value: $38,430

Taxable Value: $13,450

Parcel Number: 46-0001028700

True Value: $41,680

Taxable Value: $14,590

Parcel Number: 46-0001028701

True Value: $42,060

Taxable Value: $14,720

Parcel Number: 46-0001028702

True Value: $41,680

Taxable Value: $14,590

Parcel Number: 46-0001028703

True Value: $42,060

Taxable Value: $14,720

Parcel Number: 46-0001028704

True Value: $51,190

Taxable Value: $17,920

Parcel Number: 46-0001028705

True Value: $42,060

Taxable Value: $14,720

Parcel Number: 46-0001028706

True Value: $38,300

Taxable Value: $13,410

Parcel Number: 46-0001028707

True Value: $42,050

Taxable Value: $14,720

Parcel Number: 46-0001028708

True Value: $46,080

Taxable Value: $16,130

Parcel Number: 46-0001028709

True Value: $42,370

Taxable Value: $14,830

Parcel Number: 46-0001028710

True Value: $43,460

Taxable Value: $15,210

Parcel Number: 46-0001028711

True Value: $42,490

Taxable Value: $14,870

Parcel Number: 46-0001028712

True Value: $48,240

Taxable Value: $16,880

Parcel Number: 46-0001028713

True Value: $42,490

Taxable Value: $14,870

Parcel Number: 46-0001028714

True Value: $42,490

Taxable Value: $14,870

Parcel Number: 46-0001028715

True Value: $43,460

Taxable Value: $15,210

Parcel Number: 46-0001028716

True Value: $42,110

Taxable Value: $14,740

Parcel Number: 46-0001028717

True Value: $48,240

Taxable Value: $16,880

Parcel Number: 46-0001028719

True Value: $45,530

Taxable Value: $15,940

Parcel Number: 46-0001028720

True Value: $38,250

Taxable Value: $13,390

Parcel Number: 46-0001028721

True Value: $45,960

Taxable Value: $16,090

Parcel Number: 46-0001028722

True Value: $38,250

Taxable Value: $13,390

Parcel Number: 46-0001028723

True Value: $46,420

Taxable Value: $16,250

Parcel Number: 46-0001028724

True Value: $38,230

Taxable Value: $13,380

Parcel Number: 46-0001028725

True Value: $45,530

Taxable Value: $15,940

Parcel Number: 46-0001028726

True Value: $38,850

Taxable Value: $13,680

OHIO BOARD OF TAX APPEALS

DALE KOLESAR/MAXIMUM TITLE & ESCROW SERVICES INC., (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-356, 2019-358, 2019-360, 2019-361 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DALE KOLESAR/MAXIMUM TITLE & ESCROW SERVICES INC.
Represented by:
DALE KOLESAR
COO MAXIMUM TITLE & ESCROW SERVICES
22021 BROOKPARK ROAD #124
FAIRVIEW PARK, OH 44070

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, September 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

In these consolidated cases, the county appellees move to dismiss these four appeals on the ground appellants Dale Kolesar and Maximum Title & Escrow Services (collectively "Kolesar") lack standing. Kolesar did not respond to the motions or file a brief.

The subject property is a single parcel; the relevant tax years are tax years 2015 and 2016. The record shows no property taxes were paid on the subject from approximately 2011 until July 31, 2017, when Joshua Louis Hoert purchased the subject and trued up the taxes. Kolesar, as the title agent, then filed a penalty remission application for payments missed during

that time period. The application also requests partial abatement of interest. The BOR granted remission for tax year 2011, but it denied remission for the remaining years finding the failure to make payment was not "due to reasonable cause and not willful neglect."

According to the county appellees, appellants lacked standing to file the four applications at issue in this appeal because "R.C. 5715.39 can only apply to a taxpayer responsible for payment of the taxes, and that was not Kolesar." The county appellees rely on *Mosher v. Harris*, 2nd Dist. Montgomery No. 12834 (July 24, 1992). The *Mosher* court found a subsequent owner was without standing to request penalty remission for penalties accrued before the applicant owned the property. It held as follows:

> In whatever circumstances, R.C. 5[7]15.39 can only apply to a taxpayer. In sum, the statute applies to [former owner] and her estate, including tax years 1982-1987. She was purchasing the property on a land contract. Hence, she was liable for payment of the taxes. Appellant's application would have validity only if he was making the application [on] behalf of [the former owner].

The county appellees focus on that language to show appellants lack standing because they were not the owners when the penalties accrued. There is no question Kolesar is not the owner, and we find nothing in the record that would lead us to conclude Kolesar had express authority from the prior owner to file the complaint.

Based on the decision in *Mosher*, we agree with the county appellees and find Kolesar lacked standing to file the application for remission. Even if we found Kolesar had standing, we find nothing in the record that would warrant penalty remission under R.C. 5715.39, nor does that statute permit this board to remit interest.

Accordingly, these cases are dismissed for lack of standing.

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1588 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

SANDPIPER COLUMBUS, LLC
Represented by:
PAUL M. JONES, JR.
PAUL JONES LAW, LLC
435 EAST MAIN STREET
SUITE 220
GREENWOOD, IN 46143

Entered Thursday, September 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered upon a notice of appeal from appellant Worthington City Schools Board of Education ("BOE") from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel number 610-201410-00 for tax year 2016. We proceed to decide the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, the record of the merit hearing ("H.R.") before this board, and the parties' written

arguments. We also note that the BOE has filed a motion for sanctions against the appellee property owner, Sandpiper Columbus LLC ("Sandpiper"), and that a separate hearing was held on the motion.

[2] On tax lien date, the subject property was improved with a 124-room extended stay Value Place Hotel that was constructed in 2014 at a total cost of $4,968,000. H.R., Ex. 1 at 43. For tax year 2016, the auditor valued the property at $4,300,000. The BOE filed a valuation complaint seeking an increase to $19,370,000. At the BOR hearing, counsel explained that its value was based on an 80% loan-to-value ratio applied to a mortgage taken against the property by Sandpiper for $15,500,000 at the time it acquired the property in August 2016. Sandpiper filed a countercomplaint seeking to retain the auditor's initial value, indicating "[t]he purchase price included more than real estate." At the BOR hearing, counsel for the owner argued that no sale of the property had been proven, as the BOE had presented only a deed and conveyance statement indicating that the transfer was exempt from conveyance fee because no consideration changed hands. After considering the evidence, the BOR declined the BOE's invitation to value the property based on the transfer and mortgage, and retained the auditor's initial value of $4,300,000.

[3] The BOE appealed to this board. At this board's hearing, the BOE presented four documents and two witnesses. Mark Clark, Senior Vice President of Finance for Sandpiper's ownership group, testified pursuant to subpoena and authenticated the settlement statement (Ex. A), purchase and sale agreement (Ex. B), and Sandpiper's balance sheet as of December 31, 2016 (Ex. C.). Mr. Clark testified that Sandpiper acquired four properties, including the subject property, in an August 2016 transaction for a total purchase price of $25,250,000. H.R. at 7-8. When questioned about the $8,675,517.66 value placed on the Sandpiper Columbus LLC balance sheet for "fixed assets," Mr. Clark explained that the value was "an allocation of the cost attributed to" the subject property, including land, building, personal property, and "other intangibles." Id. at 8-

9. The BOE also presented a CBRE appraisal report prepared for Sandpiper's lender, and the testimony of its author, John Dehner, pursuant to subpoena. The CBRE appraisal opined an "as is" value as of July 28, 2016 of $8,440,000 and an "as stabilized" value as of the same date of $9,600,000. H.R., Ex. D. Mr. Dehner indicated the CBRE appraisal was "based on a conversion of the flag from Value Place to WoodSpring Suites." H.R. at 13. Sandpiper's counsel reiterated his objection to the relevance of the CBRE appraisal, as previously raised in response to the BOE's discovery motions.

[4] For its part, Sandpiper presented the appraisal report and testimony of G. Franklin Hinkle, II, MAI, who developed an opinion of value for tax valuation purposes of the subject real property of $4,990,000 as of January 1, 2016. Mr. Hinkle's appraisal was based on the subject property being under the Value Place flag as of tax lien date. He utilized the direct income capitalization, gross revenue multiplier, and sales comparison approaches to value. In rebuttal, the BOE presented the testimony of Thomas D. Sprout, MAI, who testified to his review of both the Hinkle and CBRE appraisals. Mr. Hinkle also testified in rebuttal about the CBRE appraisal.

[5] Sandpiper objected to Mr. Sprout's testimony as not being timely disclosed. The BOE argued that Mr. Sprout was presented as a rebuttal witness. This board has previously relied on the standard announced in *Phung v. Waste Management, Inc.*, 71 Ohio St.3d 408 (1994), for rebuttal testimony: "A party has an unconditional right to present rebuttal testimony on matters which are first addressed in an opponent's case-in-chief and which were not required to be brought in the rebutting party's case-in-chief." Id. at 410. Here, Mr. Sprout's testimony as to the CBRE appraisal could only be seen as a matter for the BOE's case in chief. It was clearly not prompted by anything Sandpiper presented. We therefore sustain Sandpiper's objection to Mr. Sprout's testimony about the CBRE report and strike such testimony from the record. We overrule the objection as to Mr. Sprout's testimony about the Hinkle report as appropriate rebuttal testimony.

[6] Following the merit hearing, the BOE moved for sanctions against Sandpiper for the fees the BOE incurred to obtain the CBRE appraisal. The BOE also seeks exclusion of Mr. Hinkle's report and testimony. The BOE argues that it requested the CBRE appraisal from Sandpiper, but Sandpiper repeatedly responded that it was not in possession of such appraisal. Such response, the BOE argues, was contradicted by Mr. Hinkle's testimony during the merit hearing that he had viewed the appraisal several months prior to the hearing. At the motion hearing, Mr. Hinkle further explained that he obtained the CBRE appraisal from a consultant for Sandpiper when he requested information to use in his own appraisal of the property. Sandpiper's counsel argued at the motion hearing, and in its written response to the motion, that it was not authorized to disclose the CBRE appraisal. We find such argument questionable, given that Sandpiper appears to have disclosed the appraisal to Mr. Hinkle in response to his request for information. We further note that this board ordered Sandpiper to respond in full to the BOE's discovery requests following the filing of the BOE's motion to compel and Sandpiper's motion for protective order. Although Sandpiper responded to the BOE's discovery requests by indicating it had not engaged an appraiser in connection with the sale, it clearly had the appraisal in its possession given its transmission to Mr. Hinkle several months prior to the merit hearing. H.R. at 49. We therefore find monetary sanctions are warranted in this matter; however, we deny the BOE's request to strike Mr. Hinkle's testimony. We find Mr. Hinkle's testimony regarding from whom he received the CBRE report does not impact his reliability or credibility. His testimony at the merit hearing and subsequently at the motion hearing clearly indicates he testified to the best of his knowledge at both times.

[7] We will consider the CBRE appraisal and Mr. Dehner's authenticating testimony, Mr. Hinkle's appraisal and testimony, and Mr. Sprout's testimony about Mr. Hinkle's report.

[8] Turning to the merits of this appeal, we are mindful that the burden is on the appellant to demonstrate its right to the value sought. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd.*

of Revision, 68 Ohio St.3d 336 (1994). Here, the BOE relies on the August 2016 sale of the subject property. The best evidence of real property's "true value in money" is an actual, recent sale of the property in an arm's-length transaction. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus; *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. It is clear from the documents in the record that title to the subject property did change hands temporally recent to tax lien date: the settlement statement, deed, and exempt conveyance statement demonstrate a transfer of the subject property (along with three others) from Buckeye Hospitality Crosswoods, LLC to Sandpiper Columbus, LLC in August 2016 for a bulk purchase price of $25,250,000. H.R., Ex. A; S.T., Ex. F. Although Sandpiper challenged the existence of the sale before the BOR, it appears to have abandoned such argument on appeal. The parties do not appear to dispute that the overall transaction was conducted at arm's length, and Mr. Hinkle confirmed that the sale was conducted using a broker. H.R. at 19. Sandpiper had previously managed the hotels it purchased; however, the CBRE report indicated that despite such pre-existing relationship, "the overall contract price for the portfolio appears to be market oriented." H.R., Ex. D at 1. See also *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092 (rejecting argument that parties to a ground lease were related parties with respect to a sale). We therefore find the sale to have been an arm's-length transaction.

[9] Having found the August 2016 transaction constitutes an arm's-length sale of the property, we turn to the question of whether the sale is recent to tax lien date. Recency 'encompasses all factors that would, by changing with the passage of time, affect the value of property," including conditions specific to the property itself. *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶35. See also *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439.The loss of a particular hotel franchise flag can constitute a "market change" that renders a sale remote from tax lien date. *Inn at the Wickliffe, LLC v. Lake Cty. Bd. of Revision*, 11th

Dist. Lake No. 2014-L-045, 2015-Ohio-138. Here, there is ample evidence that Sandpiper contemplated the change in flag to a WoodSpring Suites when it purchased the property. Both appraisers indicated that their research into the sale revealed that a rebranding was expected. H.R. at 13, 19; Ex. D at i; Ex. 1 at 13. Indeed, the CBRE appraisal, prepared for the lender in the transaction, primarily valued the property using a discounted cash flow analysis based on the assumption that such rebranding would increase the subject property's average daily rate. H.R., Ex. D at 37. See also H.R. at 13 (Mr. Dehner confirming appraisal based on conversion to WoodSpring Suites.) The record confirms that the reflagging actually did occur after the sale.

[10] The difference between the two appraisals demonstrates that effect such reflagging would have on the property – Mr. Hinkle's value of the property as a Value Place is roughly $4,000,000 below the CBRE value of the property assuming a reflag to a WoodSpring Suites. Mr. Hinkle testified that he didn't "believe there was any business value to the branding of Value Place," which was "evidenced by the rebranding and the resale eight months later." H.R. at 25. While we acknowledge the BOE's argument that the Supreme Court held in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, that this board does not err when it declines to rely on evidence about the circumstances of a sale of the property at issue when presented by an appraiser, the court made clear that this board is not *equired* to exclude such evidence. Id. at ¶36. Here, where both appraisers agree that a reflag occurred shortly after the sale, we find it appropriate to rely on their representations of this aspect of the August 2016 transaction. Based on the evidence before us, we find the reflagging of the subject property to a WoodSpring Suites contemplated as part of the August 2016 sale was a material change to the property and renders the sale remote from tax lien date.

[11] Even if this board were to find the sale recent to tax lien date, there is no dispute that the transaction was a bulk sale, and there is no evidence of an allocation made by the parties at the

time of the sale to the subject property. As Supreme Court explained in *FirstCal Industrial 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, two overarching principles control in a bulk sale situation: first, the best evidence of value "is the proper allocation of the lump-sum purchase price and not an appraisal ignoring the contemporaneous sale"; and second, "when the BTA 'finds [that] a proper allocation of the lump-sum purchase price to the property in question is not possible,' the BTA 'may consider all of the evidence which is before it in determining the true value in money of the property.'" Id. at ¶17-18, quoting *Conalco*, supra, at paragraph two of the syllabus, and *Consol. Aluminum Corp. v. Monroe Cty. Bd. of Revision*, 66 Ohio St.2d 410, 415 (1981). The record before us contains the following evidence we could use in allocating the sale price. First, the CBRE appraisal, which values the property under the assumption of a rebrand under a discounted cash flow analysis, and therefore does not reflect the value of the property as it existed on tax lien date. Second, the book value from Sandpiper's balance sheet, which Mr. Clark testified includes items other than real property. H.R. at 9. Third, the Hinkle appraisal. Whether described as an allocation of a purchase price that *did not* contemplate a reflag, or an independent determination of the value of the property as it existed on tax lien date, we find Mr. Hinkle's opinion of value the most probative indication the property's value for ad valorem tax purposes on tax lien date.

[12] Mr. Hinkle determined both the sales comparison and income approaches appropriate in valuing the subject property. Mr. Hinkle relied on four sales in his sales comparison approach: a Candlewood Suites, a Value Place, a Residence Inn, and a Staybridge Suites. The comparable properties sold between April 2013 and January 2016 for unadjusted prices of $23,388 to $64,458 per unit. Mr. Hinkle adjusted the sales to a range of $34,500 to $50,00 per unit based on market conditions, location, income, age, and quality, and concluded to a value of between $42,500 and $45,000 per unit for the subject property, for an estimated value of between

$5,270,000 and $5,580,000. He also conducted a direct capitalization income approach to value, concluding to a revenue per available room ("RevPAR") of $30 as of tax lien date. He then deducted expenses of 57% of revenue, including insurance, management fee, and reserves, to conclude to a net operating income ("NOI") of $580,500, which he capitalized at 10.77% (7.25% capitalization rate plus 3.52% tax additur), to conclude to a value of $5,400,000 as of tax lien date. He relied most heavily on his income approach, and deducted $410,000 for furniture, fixtures, and equipment, to conclude to a value for the subject real property of $4,990,000 as of January 1, 2016.

[13] We find Mr. Hinkle's opinion of value reasonable and well supported. We note that the cost to construct the property in 2014, as reported by both Mr. Hinkle in his report (H.R., Ex. 1 at 43) and CBRE (H.R., Ex. D at 46), approximates Mr. Hinkle's ultimate conclusion of value as of two years later on tax lien date. Although the BOE criticized Mr. Hinkle for several aspects of his report, we find the criticisms immaterial to his ultimate conclusion of value which is adequately supported by market data.

[14] Based upon the foregoing, it is the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$4,990,000

TAXABLE VALUE

$1,746,500

[15] Further, as indicated above, this board finds merit in the BOE's motion for sanctions against Sandpiper for its failure to disclose the CBRE appraisal report. Although the BOE requested its attorney fees for the time to file the motion to compel, draft and serve the subpoena upon CBRE, draft and file memos contra to the motion to quash the subpoena, draft its motion for

sanctions, and witness fees for CBRE to appear at the merit hearing, we find only a portion of such fees appropriate in this matter. We hereby order Sandpiper to remit $575 to the BOE for the time spent by the BOE drafting and filing the motion for sanctions.

OHIO BOARD OF TAX APPEALS

DAVID R. & KELLY M. FRIEDMAN, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-834 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAVID R. & KELLY M. FRIEDMAN
Represented by:
DAVE FRIEDMAN
OWNER
52464 WARD RD
WAKEMAN, OH 44889

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Friday, September 13, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellants filed the appeal with the BOR thirty-five days, and with this board thirty-six days, after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VICTOR GOZION JR., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1149
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - VICTOR GOZION JR.
Represented by:
VICTOR GOZION, JR.
OWNER
12911 SNOWVILLE ROAD
BRECKSVILLE, OH 44141

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR thirty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MATTHEW DAY & CARLY DAY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-757 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MATTHEW DAY & CARLY DAY
Represented by:
MATTHEW DAY
472 GREENHAVEN DRIVE
CHAGRIN FALLS, OH 44022

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MATTHEW ERICKSON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-750
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MATTHEW ERICKSON
3300 NORTH RIDGE RD.
VERMILION, OH 44089

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Monday, September 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the notice of appeal, the abbreviated statutory transcript certified by the county auditor, and the county appellees' written brief. In their brief, the county appellees ask that this matter be dismissed for failure to comply with statutory filing requirements. Appellant has not filed written argument.

Appeals from decisions of county boards of revision may be taken to this board pursuant to R.C. 5717.01. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property board *with the board of revision* and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Here, the county appellees assert, and the record

confirms, that appellant did not file notice of the appeal with the Lorain County Board of Revision. Such failure deprives this board of jurisdiction over this matter.

Based upon the foregoing, we find appellant has failed to properly invoke this board's jurisdiction. The matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

1029-1205 NORTH COURT STREET HOLDINGS, LLC AND MEDWICK REALTY, LLC, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2019-1212
vs.	)	(REAL PROPERTY TAX)
MEDINA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - 1029-1205 NORTH COURT STREET HOLDINGS, LLC AND MEDWICK REALTY, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
HEIDI CARROLL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
60 PUBLIC SQUARE
MEDINA, OH 44256

Entered Monday, September 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss. We decide the motion upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the motion, and appellants' response thereto.

The underlying facts are as follows. On April 1, 2019, 1029-1205 North Court Street Holdings LLC ("North Court") filed a complaint against the valuation of the following parcels for tax year 2018: 028-19A-04-208, 028-19A-04-033, 028-19A-04-112, and 028-19A-09-076. On May 31, 2019, North Court notified the Medina County Board of Revision ("BOR") of the

withdrawal of its complaint. The BOR then, on June 26, 2019, issued a letter accepting the complainant's dismissal. The property then transferred, in July 2019, from North Court to Medwick Realty, LLC. North Court and Medwick collectively filed an appeal with this board on July 24, 2019 from the BOR's acceptance of the dismissal. The county appellees now argue this board lacks jurisdiction because there is no decision by the board of revision from which appellants could appeal, and, further, that Medwick Realty LLC lacks standing to appeal because it did not own the property when the appeal was filed.

We agree with the county appellees that the appeal is not proper. R.C. 5703.02(A) and R.C. 5717.01 give this board the authority to hear and determine appeals from *decisions* of county boards of revision. Here, there has been no such decision. Although the BOR issued a letter accepting the complainant's voluntary dismissal, such letter was not necessary to terminate its proceedings on the complaint. As this board noted in *Ramirez v. Cuyahoga Cty. Bd. of Revision* (Dec. 20, 2013), BTA No. 2013-3907, unreported, at 2:

> This board noted in *Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA No. 2002-T-1271, unreported, an appeal lies only on behalf of a party aggrieved, and appellant must claim that he has been prejudiced by the judgment of the lower tribunal. As the Eighth District Court of Appeals, in *Gruenspan v. Thompson* (Oct. 12, 2000), 8th Dist. No. 77276, unreported, explained, "[a] voluntary dismissal by a plaintiff operates to nullify the claims brought against the dismissed party and leaves the parties as if the action was never filed. *Ohio Leitina Co. v. City of Cleveland* (June 22, 2000), 8th Dist. No. 76441, citing *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 596. Further, the Eleventh District Court of Appeals has held that an appellants' notices of voluntary dismissal "are self-executing and are fully and completely effectuated upon the

> filing of a notice of voluntary dismissal by plaintiff, [and] the filing of dismissal automatically terminates the case without intervention by the court." *Bridge v. Morely*, 11th Dist. No. 2008-G-2823, 2008-Ohio-1898 (citing *Selker & Furber v. Brightman* (2000), 138 Ohio App.3d 710, 714).

Moreover, appellants make no claim in their response to the motion to dismiss that there was anything improper about North Court's voluntary dismissal.

Although the parties argued regarding the standing of Medwick Realty to appeal to this board, we find such arguments irrelevant. Even if Medwick has standing to appeal, there must be a decision of the BOR to appeal from. There is no such decision here. There is only the BOR's acknowledgement of North Court's voluntary withdrawal of its complaint.

Based upon the foregoing, we find no justiciable issue over which this board has jurisdiction. Accordingly, the county appellees' motion is well taken in that respect, and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

CHRISTOPHER HODGES, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-626, 2019-627
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CHRISTOPHER HODGES
OWNER
P.O. BOX 84
ARVADA, CO 80001

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are now considered upon the county appellees' motion to dismiss the appeals as premature. The county appellees assert that the appellant did not file initial applications for remission with the county treasurer and thus no final decisions have been issued. Appellant did not respond to the motions. These matters are now decided upon the motions, the statutory transcript certified by the county board of revision, and appellant's notices of appeal.

On May 28, 2019, the appellant filed two applications for remission with this board. Appellant did not include copies of board of revision decisions. The transcript demonstrates that there is no record of a decisions issued for the revelant real property tax late payment penalty remission applications.

R.C. 5703.02 grants the Board of Tax Appeals the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from board of revision decisions and thus these matters are premature. Accordingly, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

ANDREW L. FORREST, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-625
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ANDREW L. FORREST
OWNER
4513 WEST 227TH STREET
FAIRVIEW, OH 44126

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VALJUSTCO LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-743
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - VALJUSTCO LLC
Represented by:
LINDSAY DOSS SPILLMAN
ESQ.
VORYS, SATER, SEYMOUR, PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

ELYRIA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
NEAL E. HUBBARD
HUBBARD AND HUBBARD
5330 MEADOW LANE COURT, SUITE A
SHEFFIELD VILLAGE, OH 44305

Entered Tuesday, September 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Valjustco LLC appeals from a decision of the Lorain County Board of Revision retaining the auditor's valuation of the subject property—a Burger King—for tax year 2017. The parties participated at this board's evidentiary hearing, submitted evidence, and filed post-hearing briefs. Accordingly, we now decide the case on the notice of appeal, the statutory

transcript, this board's hearing record ("H.R."), the parties' exhibits, and the parties' post-hearing briefs.

The subject property is an approximately 3,373 square foot Burger King built in 1978 and located in Elyria. The auditor valued the subject at $727,410 for tax year 2017. Valjustco filed a decrease complaint with an opinion of value of $435,230, and the appellee school board filed a counter-complaint arguing the auditor's value should be retained. At the BOR hearing, Valjustco presented the testimony of John Mitchell, a representative of Valjustco, and various exhibits. Those exhibits included a location diagram, a photograph of the subject, unadjusted sales comparables, cost information, and a lease. Mr. Mitchell testified he was experienced in the restaurant industry but is not a licensed appraiser. He testified the subject was purchased after the former franchisee filed for bankruptcy. He also reported the subject's sales are relatively weak compared to other Burger King restaurants. No appraisal was submitted, and the BOR ultimately retained the auditor's value finding Valjustco had not carried its burden.

At this board's hearing, Valjustco offered the testimony and appraisal of Roger Sours, MAI. His opinion of value was $320,000 using the sales comparison and income capitalization approaches. The county appellees offered the testimony and appraisal of Thomas Sprout, MAI. His opinion of value was $700,000 also using the sales comparison and income capitalization approaches to value. We discuss each appraisal below in further detail.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record. *Columbus City. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' arguments and appraisal evidence.

Sours classified the subject's highest and best use as continued use as a fast food restaurant or alternative retail use. H.R. at 22-24. Under the sales comparison approach, Sours compared the subject property to five current or former restaurants in Cuyahoga, Lorain, and Summit counties. The former restaurants were converted for other retail uses. Three of the five sales occurred in either 2014 or 2015. The five comparables sold for between $82.37 and $144.74 per square foot. After adjusting for differences with the subject, Sours concluded the subject property's value (under the sales comparison approach) was $320,000 as of January 1, 2017. Under the income approach, he relied upon three restaurants in Elyria and North Olmsted. Sours adjusted the comparable leases and produced a potential gross income amount figure of $33,500 (using $10.00 per square foot) for the subject. He then deducted 10%, or $3,350, for vacancy and credit loss to conclude to an effective gross income of $30,150. From that number, he deducted $905 in management fees and $506 in reserves to conclude to a net operating income figure of $28,740. He then capitalized the net operating income at 9.00%, to conclude

the subject's value to be $320,000 using the income approach. He reconciled the indicated values, giving some weight to each, and finally concluded the subject property's value to be $320,000 for tax year 2017.

By contrast, Sprout classified the subject's highest and best use as a fast food restaurant. Using the sales comparison approach, he compared the subject to six fast food restaurants in various Ohio counties, which sold between 2013-2017. Those properties sold for between $209.21 and $520.47 per square foot. Sprout then adjusted the properties to account for differences in property rights, market conditions, land ratio, building size, location, and condition. After adjustments, Sprout concluded to a value of $210 per square foot or $710,000 as of January 1, 2017. Sprout's income approach utilized thirteen fast food restaurants, most of which are located in Lorain County or the Cleveland metropolitan area. The lease comparables outside that area represent the lower and upper ends of Sprout's net rent range. In total, the rents ranged from $17.79 to $45.40. Because Sprout found the rent comparables were generally superior, he adjusted the rents and concluded a rent of $19.00 per square foot would be appropriate. After considering vacancy, credit loss, and reimbursed expenses, Sprout concluded to an effective gross income of $138,699. He then deducted 4%, or $2,371, for management fees and made other deductions for property taxes ($19,400), insurance ($3,373), utilities ($40,476), reserves ($843), and other expenses. He concluded to a total expense figure of $86,701 and a net operating income of $51,998. He capitalized net operating income at 7.5%, which resulted in an indicated value of $695,000 per the income approach. Because he argued there is an active rental market for properties like the subject, Sprout placed most weight on the income approach and concluded to a reconciled value of $700,000.

This board has long recognized appraisers must necessarily make a wide variety of

subjective judgments in selecting the data to rely upon, in determining how to adjust that data, and how to form an ultimate opinion of value. *McDonald's USA, LLC v. Lorain Cty. Bd. of Revision* (Feb. 27, 2018), BTA No. 2016-1429, unreported. Probative facts support both appraisals; however, for the following reasons, we find the facts more conclusively support Sprout's appraisal.

First, we find Sprout's highest and best use to be the more appropriate of the two. The parties generally disagree about how highest and best use should be determined in light of *Johnston Coca-Cola Bottling Co. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870 ("*Johnston*"). The *Johnston* court clarified that "[a]lthough present use cannot be the *only* measure of value, in a proper case it may be considered in determining true value for tax purposes." (Emphasis sic.) Id. at ¶ 14; see also *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision*, 12 Ohio St.3d 270, 271 (1984) (Ohio law "does not prohibit altogether any consideration of the present use of a property"). The takeaway from *Johnston* is that present use can be considered but not "to the exclusion of other factors relevant to exchange value." Id. at ¶ 15. This board need not pretend property was not actually used as it was on tax-lien date, nor must it disregard that fact when determining which comparables are "more analogous" to the subject. Id. Here, we find the record best supports Sprout's determination that the highest and best use is that of a "national fast food restaurant." Of note, Sprout did not limit its use to a specific restaurant or franchisor.

We find Sprout's determination better accounts for actual use of the property (but not to the exclusion of other factors). The property has consistently been operated as a fast food restaurant since the 1970s, and the record shows continued use as a fast food restaurant into the immediate future at least. Sprout's highest and best use accounts for the drive-thru, which he

noted is the crown jewel of the fast-food restaurant—accounting for up to 70% of sales. Sprout's determination also better accounts for the physical structure and the local market. The building's layout is one of a fast food restaurant, i.e., eating area, kitchen, counter space, drive-thru, prep room, and back office. Sprout determined the local commercial market was "stagnant," and we find the record supports such a characterization. For example, the subject is located near major arterials and at least one significant business has entered the local market. As the county appellees aptly state: "this is not a vibrant and growing market, but it is not quite the depressed, desolate neighborhood Appellants make it out to be." Moreover, for reasons explained below, we are unable to determine how occupancy by a regional or local fast food restaurant would affect value because Sours' appraisal focused overwhelmingly on general retail uses.

While Valjustco argues Sprout conducted a value-in-use appraisal, we cannot agree. Sprout's highest and best use is not for continued use by the current occupant. Rather, Sprout concluded that the same type of use, i.e., as a fast food restaurant occupied by a national tenant, was the highest and best use. We note Sprout did not value the property as special purpose property. We further note that even Sours' highest and best use contemplates continued use as a fast food restaurant. Valjustco also criticizes Sprout for not making property rights adjustments. However, Sprout's report, even if summarily, indicates he made such adjustments where he felt necessary, and the record lacks credible evidence to suggest further adjustments should have been made. We also note at least one problem with Sours' sales comparison approach, i.e., the school board presented evidence to him on cross-examination that one of his sales was a distressed sheriff sale.

Next, we find Sprout's appraisal to be more consistent with his highest and best use.

Sprout's sales comparison approach utilized sales for properties used, formerly used, or to be used as a Kentucky Fried Chicken, Arby's, Dairy Queen, Burger King, Lee's Chicken, and Captain D's. He used similar tenants in his rent comparables, all of which are consistent with his highest and best use. By contrast, Sours' comparables were mostly general retail and not fast food restaurants despite the fact that his highest and best use was for continued use as a fast food restaurant or an alternative retail use. Sours' sales comparables included a former White Castle converted to a Hertz; a Sammy's Diner converted to a used car dealership; a Kentucky Fried Chicken converted as a Mattress Warehouse, and a former Mr. Hero restaurant now used as a sit-down restaurant. Only sale five, a former White Castle turned into a Teriyaki Express, appears to have a drive-thru. While somewhat unclear in the record, it also appears Sours' lease comparables either lack a drive-thru, are not operated as fast food restaurants, or have other infirmities that make them less desirable. For example, Sours used lease comparable one in his income approach, but Sours found that property sufficiently distinguishable that he did not include it in his sales comparison approach, despite being located very near the subject.

Valjustco's brief further argues Sprout's appraisal runs afoul of *Higbee Co. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 325, 2006-Ohio-2. We disagree. Sprout estimated market rent based on lease comparables and then checked that estimate under a sales breakpoint analysis. See Ex. 1 at 35. It does not appear the sales breakpoint analysis affected his conclusion of market rent.

For these reasons, we find Sprout's appraisal to be the best evidence of value. For tax year 2017, we order the subject valued in accordance with the following values:

PARCEL NUMBER 06-25-010-101-006

TRUE VALUE

$700,000

TAXABLE VALUE

$245,000

OHIO BOARD OF TAX APPEALS

CYRUS JONES, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-320, 2019-321
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CYRUS JONES
20217 LANBURY AVE.
WARRENSVILLE HTS., OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, September 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These consolidated duplicative appeals are now considered following this board's issuance of a show cause order, dated June 14, 2019, in which we ordered the appellant property owner to demonstrate that he filed a copy of the notice of appeal with this board and the board of revision within the statutory time frame to do so and ordered all parties to clarify the issue(s) on appeal. The county appellees responded to the order; the property owner did not. See Ohio Adm. Code 5717-1-13(B). We proceed, therefore, to decide the matter upon the notice of appeal and the statutory transcript certified by the fiscal officer pursuant to R.C. 5717.01.

R.C. 5717.01 allows for an appeal from a decision of a county board of revision ("BOR") to be taken to this board, provided such appeal is filed with this board and the BOR within thirty days of the mailing of the BOR's decision. In *Hope v. Highland Cty. Bd. of*

Revision, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. **** R.C. 5717.01 is specific and mandatory. *** Failure to comply with the appellate statute is fatal to the appeal." See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely manner.") Thus, it is clear that this board lacks jurisdiction to consider the merits of appeals that were not filed consistent with relevant law.

Upon review of the record, we find that the property owner failed to file a copy of the notice of the appeal with the BOR. The property owner has failed to come forward to demonstrate otherwise. Accordingly, these consolidated duplicative appeals are dismissed.

OHIO BOARD OF TAX APPEALS

COLDWATER LIMITED PARTNERSHIP (COLDWATER LTD.), (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2018-2048
vs.	)	(REAL PROPERTY TAX)
MERCER COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - COLDWATER LIMITED PARTNERSHIP (COLDWATER LTD.)
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - MERCER COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, September 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Coldwater Limited Partnership ("Coldwater") appeals from a decision of the Mercer County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record, and Coldwater's exhibits.

The subject is a 50-unit apartment complex subsidized through the USDA's Rural Development program. See *Frontier Run L.L.C. v. Van Wert Cty. Bd. of Revision* (Apr. 4,

2016), BTA No. 2015-838, unreported (generally describing the Rural Development program). The auditor valued the subject at $1,875,840 for tax year 2017, and Coldwater filed a decrease complaint with an opinion of value at $730,000. At the BOR hearing, Coldwater called its representative who testified to the general character of the property and described the nature of the Rural Development program. Coldwater also supplied the BOR with a packet of business records, photographs, information from the USDA on the Rural Development program, and case law. The BOR ultimately retained the auditor's value finding Coldwater did not carry its burden.

Coldwater appealed to this board and presented the testimony and appraisal of Richard G. Racek, Jr., MAI. The BOR waived its appearance at this board's hearing. Mr. Racek valued the subject at $725,000 using the income capitalization method. He testified he developed the appraisal using a method substantially similar to the one he used in the appraisal he presented to this board in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported. He stated he accounted for the restrictions imposed by the Rural Development program, and his report likewise reflects that he accounted for those restrictions. Coldwater asks this board to adopt Mr. Racek's opinion of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent, arm's-length transaction, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to Mr. Racek's appraisal, which we find is the best and most persuasive evidence of value.

He used basic rental rates for the subject property, which he stated was appropriate given the nature of the Rural Development rental rate formula. He calculated his vacancy/credit loss

and expenses figures after considering the subject's operational history, tailored market data, and information from the Ohio Housing Finance Agency. He then calculated a capitalization rate of 9.96% using comparables subject to low-income housing tax credit restrictions. He ultimately concluded to a value of $725,000.

This board finds Mr. Racek's appraisal to be competent and probative evidence of value. Furthermore, we note there have been no specific challenges to any aspect of his appraisal. Accordingly, it is the decision of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 05-005700.0000

TRUE VALUE

$725,000

TAXABLE VALUE

$253,750

OHIO BOARD OF TAX APPEALS

EASTOWN VILLAGE LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. MERCER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2049 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EASTOWN VILLAGE LIMITED PARTNERSHIP
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - MERCER COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, September 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Eastown Village Limited Partnership ("Eastown") appeals from a decision of the Mercer County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record, and Eastown's exhibits.

The subject is a 48-unit apartment complex subsidized through the USDA's Rural Development program. See *Frontier Run L.L.C. v. Van Wert Cty. Bd. of Revision* (Apr. 4,

2016), BTA No. 2015-838, unreported (generally describing the Rural Development program). The auditor valued the subject at $1,735,600 for tax year 2017, and Eastown filed a decrease complaint with an opinion of value at $793,000. At the BOR hearing, Eastown called its representative who testified to the general character of the property and described the nature of the Rural Development program. Eastown also supplied the BOR with a packet of business records, photographs, information from the USDA on the Rural Development program, and case law. The BOR ultimately retained the auditor's value, finding Eastown did not carry its burden.

Eastown appealed to this board and presented the testimony and appraisal of Richard G. Racek, Jr., MAI. The BOR waived its appearance at this board's hearing. Mr. Racek valued the subject at $735,000 using the income capitalization method. He testified he developed the appraisal using a method substantially similar to the one he used in the appraisal he presented to this board in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported. He stated he accounted for the restrictions imposed by the Rural Development program, and his report likewise reflects that he accounted for those restrictions. Eastown asks this board to adopt Mr. Racek's opinion of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent, arm's-length transaction, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to Mr. Racek's appraisal, which we find is the best and most persuasive evidence of value.

He used basic rental rates for the subject property, which he stated was appropriate given the nature of the Rural Development rental rate formula. He calculated his vacancy/credit loss

and expenses figures after considering the subject's operational history, tailored market data, and information from the Ohio Housing Finance Agency. He then calculated a capitalization rate of 9.76% using comparables subject to low-income housing tax credit restrictions.

This board finds Mr. Racek's appraisal to be competent and probative evidence of value. Furthermore, we note there have been no specific challenges to any aspect of his appraisal. Accordingly, it is the decision of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 27-315200.0000

TRUE VALUE

$735,000

TAXABLE VALUE

$257,250

OHIO BOARD OF TAX APPEALS

VILLA ALLEGRA LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. MERCER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-2050 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VILLA ALLEGRA LIMITED PARTNERSHIP
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - MERCER COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, September 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Villa Allegra Limited Partnership ("Villa") appeals from a decision of the Mercer County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript ("S.T."), this board's hearing record ("H.R."), and Villa's exhibits.

The subject is a 32-unit apartment complex subsidized through the USDA's Rural Development program. See *Frontier Run L.L.C. v. Van Wert Cty. Bd. of Revision* (Apr. 4, 2016), BTA No. 2015-838, unreported (generally describing the Rural Development program). The auditor valued the subject at $896,000 for tax year 2017, and Villa filed a decrease

complaint with an opinion of value at $575,000. At the BOR hearing, Villa called its representative who testified to the general character of the property and described the nature of the Rural Development program. Villa also supplied the BOR with a packet of business records, photographs, information from the USDA on the Rural Development program, and case law. S.T., Ex. A. The BOR ultimately retained the auditor's value, finding Villa did not carry its burden.

Villa appealed to this board and presented the testimony and appraisal of Richard G. Racek, Jr., MAI. The BOR waived its appearance at this board's hearing. Mr. Racek valued the subject at $465,000 using the income capitalization method. He testified his appraisal methodology was substantially similar to that of the appraisal he presented to this board in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported. He stated he accounted for the restrictions imposed by the Rural Development program, and his report likewise reflects that he accounted for those restrictions. H.R., Ex. 3 at 12. Villa asks this board to adopt Mr. Racek's opinion of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent, arm's-length sale, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to Mr. Racek's appraisal, which we find is the best and most persuasive evidence of value.

Mr. Racek used basic rental rates for the subject property, which he stated was appropriate given the nature of the Rural Development rental rate formula. H.R. at 21; Ex. 3 at 24. He calculated his vacancy/credit loss and expense figures after considering the subject's

operational history, tailored market data, and information from the Ohio Housing Finance Agency. H.R., Ex. 3 at 25-26. He then calculated a capitalization rate of 9.76% using comparables subject to low-income housing tax credit restrictions. Id. at 27.

This board finds Mr. Racek's appraisal to be competent and probative evidence of value. Furthermore, we note there have been no specific challenges to any aspect of his appraisal. Accordingly, it is the decision of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL 27-315500.0000

TRUE VALUE

$465,000

TAXABLE VALUE

$162,750

OHIO BOARD OF TAX APPEALS

KEVIN BEIERLE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1472
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LICKING COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - KEVIN BEIERLE
OWNER
1235 DOBBINS DR
NEW ALBANY, OH

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
PAULINE O'NEILL
ASSISTANT PROSECUTING ATTORNEY
LICKING COUNTY
20 SOUTH SECOND STREET
P.O. BOX 830
NEWARK, OH 43058-0830

Entered Thursday, September 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county auditor's motion to dismiss the matter as premature. Specifically, the auditor's office asserts an application for remission of the late payment penalty was not first filed with the county, and, further, that the auditor has determined that remission may be granted. Appellant has not responded to the motion.

Upon review of the motion and the notice of appeal filed with this board, it appears the county is correct that appellant filed with this board prematurely. This board's authority is limited to review of *decisions* of county boards of revision. Relevant to applications for

remission of real property tax late payment penalties, a taxpayer seeking remission must first file an application with the county treasurer. After making a recommendation, the treasurer forwards the application to the county auditor for a determination, and the auditor forwards the application to the county board of revision for a determination. R.C. 5715.39. Only after the county board of revision makes a decision is an appeal to this board proper under R.C. 5717.01.

Based upon the foregoing, we find appellant has prematurely appealed to this board. The county's motion is therefore well taken and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

GAIL LINDA KOPP, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1236
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - GAIL LINDA KOPP
37821 LAKESHORE BLVD
EASTLAKE, OH 44095

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Thursday, September 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LESLIE CAPPAMA, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-972
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LESLIE CAPPAMA
OWNER
42385 OBERLIN-ELYRIA ROAD
ELYRIA, OH 44035

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Thursday, September 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss, which we construe as a motion to affirm the decision of the Lorain County Board of Revision ("BOR"). Appellant has appealed from a decision of the BOR dismissing a complaint against the tax year 2018 valuation of parcel number 10-00-012-000-094. The property is owned by Leslie Cappama, and the complaint was filed by Shane Cappama. The county asserts in its motion that Shane Cappama does not own real property in Lorain County, and, therefore, lacked standing to file the complaint. The county further asserts that, to the extent he sought to act as an agent for the property owner, Shane Cappama's relationship as "son" is insufficient to allow him to file on the owner's behalf. Appellant has not responded to the county's motion.

The General Assembly has provided that only certain persons may file complaints against the valuation of real property. R.C. 5715.19(A) provides that "[a]ny person owning taxable real property in the county" may file a complaint. There is no indication that Shane Cappama owns taxable real property in Lorain County. R.C. 5715.19(A) also provides that specified non-attorneys may file as agents of an owner of taxable real property; family members, with the exception of the owner's spouse, are not among those who are authorized to file. This board has previously determined that non-attorney family members are not authorized to file complaints on behalf of family members. See, e.g., *Voudouris v. Lucas Cty. Bd. of Revision* (Oct. 5, 2007), BTA No. 2006-H-1807, unreported. There is no indication that Shane Cappama is an attorney licensed in Ohio.

Based upon the foregoing, we agree that the underlying complaint was not filed by an authorized complainant, and, therefore, failed to invoke the jurisdiction of the Lorain County Board of Revision. The county's motion is well taken. It is the decision of this board that the decision of the BOR dismissing the complaint is hereby affirmed.

OHIO BOARD OF TAX APPEALS

GRANT R. TEMPLIN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1185
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GRANT R. TEMPLIN
OWNER
6336 RIVER RD
MADISON, OH 44057

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Thursday, September 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the BOR *within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant failed to timely file the appeal. The BOR mailed its decision on June 18, 2019; accordingly, the thirty-day appeal period ended July 18, 2019. Appellant filed notice of the appeal with this board on July 29, 2019, and with the BOR on August 2, 2019. Both filings were after the statutory thirty-day period. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter

must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOHN MICHAEL BOHINC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-682
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOHN MICHAEL BOHINC
Represented by:
MICHAEL BOHINC
1900 GROVE COURT #314
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, September 27, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss it as untimely filed. We consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of the hearing before this board, the motion, and appellant's response thereto.

The statutory transcript indicates the Cuyahoga County Board of Revision ("BOR") mailed its decision on May 7, 2019. Pursuant to R.C. 5717.01, an appeal from a decision of a county board of revision may be taken to this board within *thirty days* of the mailing of the BOR's decision. Here, the thirty-day statutory deadline was June 6, 2019. Appellant electronically filed notice of the appeal with this board on June 7, 2019, and filed notice of the

appeal with the BOR via email the evening of June 12, 2019. Neither filing was made within the thirty-day statutory period. Appellant merely confirmed the facts of his BOR filing in his response to the motion.

Failure to file the appeal within thirty days deprives this board of jurisdiction over the merits of the appeal. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). This board may only review board of revision decisions "where the appeals have been filed in a timely manner." *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000). The record before us establishes that appellant filed the appeal with both this board and the BOR more than thirty days after the mailing of the BOR's decision. The county appellees' motion is well taken.

Based upon the foregoing, we find we lack jurisdiction over this matter. Accordingly, the county's motion is granted and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

ROBERT A. COLE, TRUSTEE OF THE DARBY TRUST, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1384 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT A. COLE, TRUSTEE OF THE DARBY TRUST
Represented by:
SHAHROKH MINOUI
BENEFICIAL OWNER
P.O. BOX 16272
COLUMBUS, OH 43216

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, September 27, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss for lack of jurisdiction due to appellant's failure to timely file notice of the appeal with the Franklin County Board of Revision ("BOR") as required by R.C. 5717.01. Appellant has not responded to the motion.

The statutory transcript indicates that the BOR mailed its decision to appellant on July 17, 2019. R.C. 5717.01 provides that an appeal from a decision of a county board of revision may be taken to this board by filing notice of the appeal with this board and with the board of revision within *thirty days* of the mailing of the board of revision's decision. The statutory

deadline to file the requisite notices in this matter was August 16, 2019. While appellant timely filed with this board on August 15, 2019, appellant filed notice of the appeal with the BOR on August 22, 2019. As such, the appeal fails to comply with the mandatory requirements of R.C. 5717.01.

The Ohio Supreme Court has held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely manner."). Appellant's failure to timely file notice of this appeal with the BOR is fatal to its appeal.

Based upon the foregoing, the county's motion is well taken and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

JEFFREY R. SIMPSON & JAMES T. SIMPSON, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1252 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEFFREY R. SIMPSON & JAMES T. SIMPSON
Represented by:
JEFFREY R. SIMPSON
OWNER
291 WOODSFIELD CT.
POWELL, OH 43212

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, September 27, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ERIC D. & BONNIE J. SCHRAMM, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1439 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ERIC D. & BONNIE J. SCHRAMM
Represented by:
BONNIE J. SCHRAMM
OWNER
6838 CHERHILL WAY
DALLAS, TX 75230

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that no final decision has been issued by the Franklin County Board of Revision from which appellants could appeal to this board. Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On August 26, 2019, the appellants filed an application for remission with this board. Appellants did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision stating that

there is no record of a decision issued for appellants' application.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VALERINO DIFRANCO, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1229
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - VALERINO DIFRANCO
2851 LORETO DRIVE
WILLOUGHBY HILLS, OH 44094

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NEVEL GREENLEE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1142
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NEVEL GREENLEE
OWNER
12005 IOWA AVENUE
CLEVELAND, OH 44108

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GUY LEININGER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1092
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GUY LEININGER
OWNER
9641 SILK AVENUE
CLEVELAND, OH 44102

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HELENA A GLAZER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1018
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - HELENA A GLAZER
Represented by:
HELENA GLAZER
4441 SILSBY ROAD
UNIVERSITY HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss for lack of jurisdiction, the responses thereto, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

The county argues that appellant has failed to follow the statutory requirements to invoke this board's jurisdiction. This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000). "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). R.C. 5717.01 provides that "[a]n

appeal from a decision of a county board of revision may be taken to the board of appeals within thirty days after notice of the decision of the county board of revision is mailed ***." It further provides that "[s]uch appeal shall be taken by filing of a notice of appeal *** with the board of tax appeals *and with the county board of revision*." The county asserts that appellant failed to file notice of the appeal with the Cuyahoga County Board of Revision ("BOR"). Appellant does not dispute such fact; however, she argues that the motion is improper and that this board properly has jurisdiction over the appeal.

First, we reject any argument by appellant that a motion to dismiss is improper because appellant asked that her appeal be considered on the board's small claims docket. R.C. 5703.021 provides an expedited and more informal process for appeals in specific circumstances; however, the jurisdictional requirements for appealing to this board remain the same.

Second, we reject appellant's argument that this board's notification of the BOR of the filing of this appeal complied with the requirement to file notice of the appeal with the board of revision. The Supreme Court of Ohio has considered such argument and rejected it:

> However, the BTA has no statutory duty to inform a board of revision that an appeal has been filed. The statute burdens appellants with this duty. Appellants may not substitute the BTA's voluntary deeds for their required acts.

Austin Co. v. Cuyahoga Cty. Bd. of Revision, 46 Ohio St.3d 192, 194 (1989). We likewise reject any argument that, by filing the statutory transcript, the county has waived the statutory service requirement.

Finally, we find no merit in appellant's argument that the county and/or this board failed to inform her of the dual filing requirement. As the county notes in its reply memorandum, estoppel does not apply against the state. See *Reynolds Ave. Transfer Station v. Franklin Cty. Bd. of Revision* (Nov. 30, 2001), BTA No. 2001-S-217, unreported; *Psathas v.*

Cuyahoga Cty. Bd. of Revision (Jan. 12, 2001), BTA No. 2000-M-1471, unreported; *Salama v. Cuyahoga Cty. Bd. of Revision* (Nov. 9, 2007), BTA No. 2007-V-450, unreported.

This board is a creature of statute. We may only exercise our authority to review decisions where the appeal is filed in compliance with R.C. 5717.01. See *Cincinnati*, supra; *Hope*, supra. The record is clear that appellant failed to file notice of the appeal with the Cuyahoga County Board of Revision. Appellant has failed to follow the statutory requirements to invoke this board's jurisdiction. We lack any equitable jurisdiction to overlook such fact. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953). Accordingly, the county appellees' motion is well taken and we hereby dismiss this appeal for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

JOE G. BALLARD, JR., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-952
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOE G. BALLARD, JR.
OWNER
18022 STATE ROUTE 301
LAGRANGE, OH 44050

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the BOR *within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant filed the appeal with this board thirty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is,

dismissed.

OHIO BOARD OF TAX APPEALS

CLAUDINE MENESSE, TRUSTEE, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-654 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLAUDINE MENESSE, TRUSTEE
Represented by:
CLAUDINE MENESSE
374 WEST GLENGARY CIRCLE
HIGHLAND HEIGHTS, OH 44143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

128 LLC, ROBERT ZAMES, PRES/OWNER, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-474 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 128 LLC, ROBERT ZAMES, PRES/OWNER
Represented by:
ROBERT ZAMES
10556 CLEARLAKE DR
PAINESVILLE, OH 44077

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 11-A-015-M-00-015-0, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a residential condominium unit, and the auditor initially assessed its total true value at $112,800. Appellant filed a complaint with the BOR seeking a reduction in value to $92,000. At the BOR hearing, appellant argued that the value of the subject property should be reduced because property values were declining, submitting

information about several properties that had sold. Appellant also claimed that the auditor's measurements were incorrect and overstated the unit's living area. Based on notes in the transcript, it appears that an individual from the auditor's office reviewed the dimensions attributed to the subject property and remeasured to ensure that they utilized the correct information. The BOR issued a decision reducing the initially assessed valuation after removing the square footage associated with "finished attic" space. From this decision, appellant filed the present appeal seeking further reduction to $92,000, again based on the unadjusted comparable data presented to the BOR. The parties waived the opportunity to appear before this board to present additional evidence or argument.

The burden in the present appeal is on the appellant to prove its right to a reduction from the BOR's value. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Appellant seeks to meet this burden through the presentation of evidence regarding sales of other properties and claims regarding flaws in the auditor's measurements of the subject.

Initially, we find that the comparable sales information submitted by appellant does not establish the further reduced value that it seeks. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the list of sales appellant provided to the BOR is not probative evidence of value because appellant has not shown any knowledge about the circumstances of those sales or adjusted them for differences among the properties. Id. Additionally, with respect to appellant's challenge to the auditor's measurements for the subject property, it appears that an individual from the auditor's office reviewed the records and remeasured the subject property. Presumably based on this review, the BOR

reduced the value of the property after adjusting the subject's square footage. The BOR also

reviewed the sales submitted by appellant as well as others if deemed more pertinent. Thus, it appears that the BOR addressed appellant's arguments and it benefited from a corresponding reduction in value, the propriety of which has not been challenged on appeal.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value but find it appropriate in this case to retain the BOR's value. Id. at ¶10.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$108,790

TAXABLE VALUE

$38,080

OHIO BOARD OF TAX APPEALS

MATTHEW & M DAGIASIS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-445 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MATTHEW & M DAGIASIS
Represented by:
MATTHEW DAGIASIS
1306 GLADYS AVE
LAKEWOOD, OH 44107

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 312-14-038, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and statutory transcript certified pursuant to R.C. 5717.01.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $125,600 to $105,000. In support of the complaint, the property owner appeared at the BOR hearing on the matter and asserted that

defects of the subject property, i.e., its age and condition, its location near blighted properties and criminal activity, supported his requested value. The BOR subsequently issued a decision that retained the subject property's initially assessed value. This appeal ensued.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn.. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

After reviewing the property owner's arguments and evidence, we conclude that he has failed to satisfy the evidentiary burden on appeal. Though he asserted the subject property suffered from several defects, he failed to quantify how much the defects negatively impacted the subject property's value. For example, is the subject property's value diminished by $1,000 or $10,000 as the result of its proximity to criminal activity? In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, at ¶7, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev.*, 75 Ohio St.3d 227, 228, *** (1996) (stating '[e]vidence of needed repairs, or the cost of needed

repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.)

Based upon our review of the record, we conclude that the property owner has failed to provide competent, credible, and probative evidence of the subject property's value. As such, we must retain the subject property's initially assessed value. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2018:

TRUE VALUE: $125,600

TAXABLE VALUE: $43,960

OHIO BOARD OF TAX APPEALS

JOE ANN LUCAS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-377
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - JOE ANN LUCAS
5008 BIRCH GROVE DR.
GROVEPORT, OH 43125

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Joe Ann Lucas appeals from a decision of the Franklin County Board of Revision ("BOR") denying Ms. Lucas' 2018 homestead exemption application because her income was too high. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The General Assembly has modified the homestead exemption in recent years. Enacted in 1971, the homestead exemption provides qualifying property owners with a reduction in their property's true value—the net result being the owner will pay less in property taxes. See *Rehn v. Allen Cty. Bd. of Revision* (May 3, 2016), BTA No. 2015-2177, unreported.

When enacted, the homestead exemption was only available if the property was the owner-occupied residence of a person at least 65 years old whose income did not exceed a

statutory amount. *Devan v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102945, 2015-Ohio-4279. In 2007, the General Assembly eliminated the income test. Id. In 2013, the General Assembly reinstated the income test for tax years 2014 and after. The income threshold for tax year 2018 was $32,200. See R.C. 323.152(A)(1)(b)(iii) (setting the income limit at $30,000); R.C. 323.152(A)(1)(d) (empowering the Tax Commissioner to adjust the income limit based on gross domestic product); Ohio Department of Taxation, *Real Property Tax-Homestead Exemption*, https://www.tax.ohio.gov/real_property.aspx (accessed July 10, 2019).

R.C. 323.151(C) defines "income" as "Ohio adjusted gross income of the owner and the owner's spouse for the year preceding the year in which application for a reduction in taxes is made, as determined by R.C. 5747.01(A)." In other words, income for homestead exemption purposes is synonymous with income for Ohio income tax purposes.

Ms. Lucas reported her income for 2016 as follows:

$27,841 – Ohio Public Employees Retirement System ("PERS")

$696 – Social Security Benefits

$4,958 – Annuity

She testified her income has not dramatically changed since 2016. We find that only the PERS and annuity payments should be included in the homestead income calculation. Pension benefits are generally considered income for federal and Ohio income tax purposes. *Compare* 26 U.S.C. 61(10) *with* R.C. 5747.01. However, Social Security benefits are not included in a taxpayer's Ohio adjusted gross income. See R.C. 5747.01(A)(5) (exempting "benefits of under Title II of the Social Security Act"). Therefore, Ms. Lucas' income for purposes of the homestead exemption was $32,799, which exceeds the income threshold of $32,200. As such, we find Ms. Lucas does not qualify because her income exceeded the statutory threshold.

At this board's hearing, Ms. Lucas stated her belief that this board could consider extenuating circumstances since her income barely exceeds the threshold. She conveyed that a state official told her this board could consider the hardship she might endure if the credit was withheld. While we are sympathetic to her situation, this board cannot change the homestead exemption income limit. That can only be done by the General Assembly. See R.C. 323.152(A)(1)(d). The Ohio Supreme Court has long held this board is a creature of statute and has no power to act unless specifically authorized by statute. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *Toledo v. McAndrew* (Sept. 1, 2009), BTA No. 2004-B-183, unreported. As such, we lack equitable jurisdiction and cannot consider appellant's individual circumsntaces. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953).

For these reasons, it is the decision of this board that the homestead exemption application must be, and hereby is, denied for tax year 2018.

OHIO BOARD OF TAX APPEALS

TIMOTHY DEVAUGHN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-342
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - TIMOTHY DEVAUGHN
1008 BROHM LANE
DAYTON, OH 45417

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Timothy Devaughn appeals from a decision of the Montgomery County Board of Revision ("BOR") valuing the subject property at $38,980 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record ("H.R.").

The auditor valued the subject at $43,340 for tax year 2018, and appellant filed a decrease complaint with an opinion of value at $12,650 per a July 2018 foreclosure sale. At the BOR hearing, appellant stated the subject belonged to a close family member when it was foreclosed and then auctioned in July 2018. He indicated there was a minimum bid of $8,000, and he indicated a bank also bid on the property. However, the record lacks tangible evidence to confirm there was a minimum bid, the number of bidders, the number of bids, or other details of

the sale. Appellant also testified the subject was in generally poor condition when he purchased it. The BOR ultimately reduced the value to $38,980, but the record is unclear about the basis of such reduction. Appellant filed a notice of appeal and attended this board's hearing. There, he reiterated his belief that the subject should be valued in accordance with the sale. H.R. at 4. He stated he did not know why the BOR adopted its value. Id.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has emphasized this board must "eschew a presumption of validity of the BOR's value and instead perform [our] own independent weighing of the evidence in the record." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶¶ 15, 22; see also *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. Here, appellant relies solely on the July 2018 foreclosure auction sale. However, the Ohio Supreme Court has been clear that auction sales are considered forced, and this board must presume the sale was not arm's-length. In *Olentangy Local Sch. Bd. of Edn. v. Delaware Cty. Bd. of Revision* , 141 Ohio St.3d 243, 2014-Ohio-4723 ("*TaDa*"), the court held taxing authorities must "presume that an auction sale price is not a voluntary arm's-length transaction." Id. at ¶ 2.

However, that presumption can be rebutted—in fact, the *TaDa* auction sale was found to be arm's-length. The *TaDa* court found that auction sale was arm's-length because the subject was on the open market for a meaningful period of time, testimony indicated the "auction was publicly advertised for a significant period of time, it was well attended, and there were multiple bidders for the property." Id. at ¶ 51. The Ohio Supreme Court last analyzed auction sales,

TaDa included, in *N. Canton City Sch. Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 292, 2018-Ohio-1 ("*LFG*"). In *LFG*, the court found an auction sale was arm's-length when the auction was well marketed, a significant number of bids were placed on the property, and there was no preexisting relationship between a buyer and seller. Id. at ¶ 5. The Supreme Court found that evidence was sufficient to rebut the presumption and ordered the property in that case to be valued in accordance with the sale. Id.; see also *Hemmerich Realty LLC v. Montgomery Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2072, unreported (applying *TaDa*).

When we read *TaDa* and *LFG* together, we see the Supreme Court has provided several factors for us to consider in determining whether an auction sale is arm's-length: 1) whether, and how long, the property was on the market prior to auction; 2) whether and how the auction was advertised; 3) the number of willing and able buyers who attended the auction; 4) whether multiple bids were placed. Those factors are not exhaustive, but they are factors the Ohio Supreme Court found probative in *TaDa* and *LFG*. Those factors, of course, are to be considered alongside the standard arm's-length transaction factors applicable to every sale. Namely, a sale is arm's-length when "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989).

The valuation of real property "is a question of fact, the determination of which is primarily within the province of the taxing authorities" including this board. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶ 6. Having reviewed the evidence independently, we do not find appellant has carried his burden of showing the foreclosure sale was arm's-length. We lack tangible and credible evidence about whether the auction was advertised, how it was advertised, the number of willing buyers, etc. While appellant did not rely on evidence that the subject suffers from negative characteristics, this board does not find those characteristics warrant an adjustment either. The Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must go further, through an appraisal, to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶ 7). Here, the impact those negative characteristics could have on value is not self-evident. For these reasons, we find appellant has not carried his burden.

We are also mindful of our duty to independently review the BOR's value. Again, we "eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226. We will not rely on a BOR's value if it is unsupported

by the evidence. See *Sapina*, supra. Here, we are unable to determine why the BOR valued the subject at $38,980 instead of the auditor's value of $43,340. Appellant testified he did not know why the change was made, and we are unable to determine a principled reason for that value based on the record certified on appeal. Moreover, the parcel record card does not indicate a reason that value was chosen. Accordingly, we must reinstate the auditor's original valuation. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12.

For tax year 2018, we order the property to be valued in accordance with the following values:

PARCEL R72 15501 0089

TRUE VALUE

$43,340

TAXABLE VALUE

$15,170

OHIO BOARD OF TAX APPEALS

WILLIAM R JENKINS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2018-2045
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - WILLIAM R JENKINS
Represented by:
WILLIAM JENKINS
4417 WAGNER ROAD
DAYTON, OH 45440

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

KETTERING CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] William Jenkins appeals from three decisions of the Montgomery County Board of Revision ("BOR") retaining the auditor's value of the three subject properties for tax year 2017. Both appellant and the appellee board of education ("BOE") participated at this board's hearing. We now decide the appeal on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), and the exhibits submitted at this board's hearing.

[2] When cases are appealed from a board of revision to this board, the appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[3] Before reaching the merits, we address a jurisdictional issue with the complaint. The complaint lists the following three parcels: N64 01902 0015, located at 3825 Wilmington Pike; N64 01902 0016, located on Wilmington Pike; and N64 01902 0023, located at 1700 Mayfield Avenue. Appellant stated at the BOR hearing, and again at this board's hearing, that he incorrectly listed parcel N64 01902 0023 on the complaint. He intended to list N64 01902 0028, which is located next to the two Wilmington Pike properties. The BOR did not take jurisdiction over the parcel appellant intended to challenge. We agree with the BOR's decision, and we likewise decline to consider the valuation of parcel number N64 01902 0028. See *Hilltop Commons v. Mingo*, 10th Dist. Franklin No. 11AP-1089, 2012-Ohio-5661. Because it was challenged in error, appellant presented no evidence in support of a valuation change for N64 01902 0023. We are, therefore, compelled to find no change is warranted and the auditor's value for that parcel should be retained. See *Jakobovitch*, supra.

[4] We now turn to the two remaining parcels. The parcels were formerly held by the estate trust of appellant's deceased family member. He purchased the parcels for a combined $200,000

from the trust. While the record is somewhat unclear, appellant testified at the BOR hearing that he bought the properties only a few months before the BOR hearing. While a recent estate sale ordinarily does create a presumption of value, this board is unable to find the estate sale in this matter creates a presumption for two reasons. First, we lack tangible evidence to substantiate the necessary details of the sale, e.g., a deed, conveyance fee statement, purchase agreement, a settlement statement. The Ohio Supreme Court has been "clear that some documentary evidence" is required to "establish the basic facts of the sale." *Beechler v. Fayette Cty. Bd. ofRevision*(May 6, 2019), BTA No. 2018-732, unreported (citing *Dauch v. Erie Cty. Bd. Of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412). Because no party presented documentary evidence of the sale and the record card is generally devoid of the details, this board is unable to find the sale creates a presumption of value. Id. Second, we are unable to find the sale was arm's-length because appellant purchased it from a family members' estate trust, and it appears he had at least some control or influence over the trust. See, e.g., H.R., Ex. A-B (appellant noting he had been working with a commercial broker to sell the property for several years, meaning long before he owned the properties outright); H.R. at 7. For these reasons, we do not find the purported sale creates a presumption of value.

[5] Appellant also relies on: 1) evidence of negative characteristics; 2) details of a sale that was negotiated but ultimately fell through; and 3) appellant's subjective opinion of value. We are likewise unable to find those pieces of evidence support his proposed value. First, as the Supreme Court stated in *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996), "[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value." A party must do more than demonstrate the existence of negative factors; he or she must also quantitatively show the impact such factors have on the property's value. *Germano v. Cuyahoga Cty. Bd. of Revision* (June 19, 2018), BTA No. 2017-1468, unreported. In the absence of an appraisal quantifying the effect of any adverse factors on the value of the property, we find the evidence insufficient to justify the requested reduction.

[6] Second, we reaffirm unsuccessful sales are not probative evidence of value. See, e.g., *Modern Development Corp. v. Franklin Cty. Bd. of Revision* (July 14, 2016), BTA No.2015-1847, unreported. In *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397, 400 (1997), the Ohio Supreme Court held "unaccepted offers to purchase do not constitute a sale price and so raise no such presumption" like the rebuttable presumption raised by an actual recent arm's-length sale. The Ohio Supreme Court has said this board is not required to "assign any weight" to unsuccessful attempts to sell the property. Id. at ¶ 17-18. At least one appellate court has said, in a decision affirming this board, that a "listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." *Kaiser v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, at ¶20. See also *Soc. Natl. Bank v. Carroll Cty. Bd. of Revision*(Apr. 19, 1996), BTA No.1994-M-454, unreported; *Brown v. Hamilton Cty. Bd. of Revision* (Apr. 19, 2011), BTA No.2010-A-2950, unreported; *Matthews v. Hamilton Cty. Bd. of Revision* (Feb. 22, 2008), BTA No.2006-V-820, unreported. As a result, we find no reason to modify the auditor's value based on the unsuccessful sale.

[7] Finally, we find no reduction is warranted based on appellant's subjective opinion of value. While an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested. "*Barker v. Hamilton Cty. Bd. of Revision*(Nov. 30, 2018), BTA No. 2018-414, unreported. We do not find appellant's opinion of value probative because it is unsupported by an appraisal or other evidence of value that would justify the reduction. To the extent appellant argues the taxes are too high because of the tax rate, we note our review is strictly limited to the question of value and not tax rates.

[8] For these reasons, we find the true and taxable values of the properties as of January 1, 2017, were as follows:

PARCEL NUMBER N64 01902 0015

TRUE VALUE

$191,290

TAXABLE VALUE

$66,950

PARCEL NUMBER N64 01902 0016

TRUE VALUE

$72,720

TAXABLE VALUE

$25,450

PARCEL NUMBER N64 01902 0023

TRUE VALUE

$67,110

TAXABLE VALUE

$23,490

OHIO BOARD OF TAX APPEALS

BAINBROOK/LAUREL SPRINGS
HOMEOWNERS ASSOCIATION, INC., (et. al.),

CASE NO(S). 2018-1444

Appellant(s),

vs.

REAL PROPERTY TAX
DECISION AND ORDER

GEAUGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s) - BAINBROOK/LAUREL SPRINGS HOMEOWNERS ASSOCIATION, INC.
Represented by:
STEVEN OTT
ESQ.
1300 E. 9TH STREET
SUITE 1520
CLEVELAND, OH 44114

For the Appellee(s) - GEAUGA COUNTY BOARD OF REVISION
Represented by:
LINDA APPLEBAUM
ASSISTANT PROSECUTING ATTORNEY
GEAUGA COUNTY
231 MAIN STREET, STE. 3A
CHARDON, OH 44024-1293

KENSTON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, Bainbrook/Laurel Springs Homeowners Association, Inc. ("Bainbrook") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 02-015750, 02-420021, 02-420022, 02-420023, 02-420024, 02-420025, 02-420197, 02-420198, 02-420406, 02-420407, 02-420426, 02-

420447, 02-420643, and 02-420644, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and any written argument of the parties.

[2] The subject property is comprised of 128.6 acres of land that is utilized by Bainbrook as greenspace and common area (including some buffer from areas outside of the community), in addition to some improvements such as a clubhouse, pool, tennis courts, and a water treatment facility. The auditor initially assessed the parcels' total true value at $241,000, based on a value of $500 to $1,000 per acre for the land in addition to the value of the improvements. Bainbrook filed a complaint with the BOR seeking a reduction to a value of $0. The board of education ("BOE") filed a countercomplaint in support of the auditor's value.

[3] At the BOR hearing, Bainbrook argued that the value of the subject property should be $0 or some other nominal value due to the restrictions in place on the property. James A. Huber, MAI, offered his opinion that the subject parcels have no independent value, which is instead reflected in the value of the home lots located within the planned community. Huber explained that the subject property cannot be sold or developed, does not generate income, and is required area for any modern development. Bainbrook further argued that other counties have reduced the value of common areas to a nominal value and that Geauga County should do the same. The BOE argued that the parcels are already valued lower than other lots and that any further reduction in the land values is unnecessary. The BOR issued a decision maintaining the initially assessed valuation, which Bainbrook appealed to this board.

[4] This board convened a hearing, at which Bainbrook again relied on Huber's opinion that the property lacked independent value, along with testimony from the manager of the homeowner's association ("HOA"), Madeline Osborne, who manages the clubhouse, pool, and other common areas. The auditor's chief appraiser, Chris Greenawalt, testified regarding the initial valuation and presented evidence of two sales he considered comparable to the subject

parcels. Greenawalt also explained that the value of the subject parcels was already much lower than the land value for other residential lots. We note that during the hearing, Bainbrook offered an Amended and Restated Declaration of Covenants, Conditions, Reservations, Restrictions and Easements into evidence, to which the appellee parties objected. The attorney examiner reserved ruling and instructed the parties to address the issue through written argument. Upon further consideration on the parties arguments, the objection is overruled and the document marked as Bainbrook's Exhibit 1 will be admitted into evidence and given its appropriate evidentiary weight.

[5] Bainbrook argues that the subject property must be assessed based on its true value in money, which it asserts is the amount at which it would sell on the open market. Bainbrook asserts that because of the restrictions encumbering the subject property, it could not sell and should, therefore, be assessed at a nominal value. Citing to *Beckett Ridge Assn. v. Butler Cty. Bd. of Revision*, 1 Ohio St.3d 40 (1982), R.C. 5713.01(B), and Ohio Adm. Code 5703-25-11(A). Bainbrook challenged the arm's-length nature of the sales presented by Greenawalt. The BOE argues that this board has previously rejected Bainbrook's argument regarding the consideration of private deed restrictions in *Bainbrook/Laurel Springs Homeowners Assn., Inc. v. Geauga Cty. Bd. of Revision* (Jul. 5, 2017), BTA No. 2016-1415, unreported. The BOE further asserts that Huber failed to prepare an appraisal of the property and improperly assigned a value of $0 to the subject property, including those parcels upon which tennis courts, a clubhouse, and other improvements are located. The BOE also contends that the auditor's value for the subject property conforms with similar parcels in the county. Bainbrook acknowledges this board's prior decision regarding the valuation of the subject property but claims that it must be distinguished from the present appeal. Bainbrook contends that the board's conclusions in the prior appeal were due to procedural shortcomings and a lack of evidence rather than a rejection of its legal arguments. In this case, Bainbrook contends that this board should rely on Huber's conclusion of

value and reduce the value of the subject property.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In *Cardinal*, supra, at paragraphs two and three of the syllabus, the court held that "[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness" and that it "is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before [it]."

[7] Bainbrook relies on Huber's opinion as evidence in support of its requested reduction and to distinguish the present appeal from this board's decision for a prior year. Huber's opinion, however, is again based on the underlying premise that the common areas lack independent value because the value is included in the individual residential lots. While R.C. 5713.01 does require, generally, the auditor to appraise each parcel at its true value in money at certain time intervals, R.C. 5713.03 provides guidance on how the auditor should fulfill this duty. Pursuant to R.C. 5713.03, the county auditor is required to determine, "as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract,

lot, or parcel of real property and of buildings, structures, and improvements located thereon." Because the value of the subject parcels should exclude the effects of any private, voluntary deed restrictions, this board has previously rejected Bainbrook's argument:

> "The property owner contends that due to the deed restrictions, the subject properties have no independent value, as any benefit they provide is reflected in the increased assessed values, and property tax payments, of the homes in the subdivision. As noted by the county appellees, however, *Beckett Ridge* [*Assn. v. Butler Cty. Bd. of Revision*, 1 Ohio St.3d 40 (1982)] was limited by *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision*, 73 Ohio St.3d 710, 711 (1995), which discussed the valuation of a property encumbered by private, voluntary deed restrictions. In *Muirfield*, the court first discussed its holding in *Alliance Towers v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 (1988), in which it 'concluded that voluntary encumbrances, such as leasehold interests, deed restrictions, and restrictive contracts with the government, which the owner had granted, should not complicate the true value of property.' *Muirfield*, supra, at 711. The court then remanded the matter to this board 'to value the property as a fee simple estate, unencumbered by the voluntarily undertaken restrictions contained in the warranty deed.' Id. at 712. The court also discussed its holding in *Beckett Ridge*, indicating that '[i]n resolving the case, we called on the tax authorities to establish and apply uniform standards to take into consideration all relevant factors in valuing such property. Nevertheless, we did not prescribe the type of estate to be valued for tax purposes in *Beckett Ridge*; we prescribed this in *Alliance Towers*.' *Muirfield*, supra, at 712. Compare *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762 (holding that deed restrictions associated with a low income housing tax credit project constitute governmental restrictions for the general welfare and must be taken into account in the property's value). Accordingly, the case law is clear that private deed restrictions such as those involved in the present appeal should not be considered in the valuation of property for property tax purposes."

Bainbrook/Laurel Springs, supra.

[8] Furthermore, the difference in treatment for common elements of a condominium property as opposed to common areas in a planned unit development are established by law. Pursuant to R.C. 5311.11, "[e]ach unit of a condominium property and the undivided interest in the common elements appurtenant to it is deemed a separate parcel for all purposes of taxation and assessment of real property." No such provision in included in Chapter 5312, which sets for Ohio's Planned Community Law and expressly distinguishes condominium properties from "planned

communities," such as the subject property, where the HOA is expressly permitted to hold title to real property and pass along its expenses to its members. R.C. 5312.01(M); 5312.06(A); 571312.01(D)(7).

[9] Even if we were to find that the restrictions encumbering the subject parcels should be included in the value of the subject property, we would find that Huber's conclusion is not reliable evidence of value. This board has historically rejected the argument that a property is worthless or has zero value. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. Of Revision* (Mar. 5, 2015), BTA No. 2014-1227, unreported; *Loritz v. Butler Cty. Bd. of Revision* (May 6, 2008), BTA No. 2006-K-1503, unreported. Although unique circumstances may exist that establish a parcel of land has only nominal value, those circumstances are not present in this case. While Huber and Bainbrook insist that no market exists for the type of property at issue, the county appellees offered evidence of two sales. Additionally, although we do not reach an ultimate conclusion regarding the arm's-length nature of these sales because none of the parties has relied on them to establish value and we lack sufficient evidence to make that determination, we reject Bainbrook's argument that they could not have been at arm's-length or reflective of the true value of those properties. Notably, Bainbrook's argument that these sales could not be arm's-length because the president of the HOA was a party to the sales is directly contrary to the argument that the subject parcels lack value because they cannot sell without agreement from the entirety of the HOA. By Bainbrook's logic, the president of the HOA involved in the comparable sales could unilaterally decide to buy or sell property without consideration of whether it would be in the HOA's best interest, while its president lacks the authority to make a similar decision and must get approval from the entire HOA. We find that such an argument is not supported by the facts here and reject Bainbrook's contentions regarding the inherent lack of reliability of the comparable sales, noting that they were utilized to demonstrate the presence of

a market and not to set the value of the subject property.

[10] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[11] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 02-015750

TRUE VALUE $133,600

TAXABLE VALUE $46,760

PARCEL NUMBER 02-420021

TRUE VALUE $4,000

TAXABLE VALUE $1,400

PARCEL NUMBER 02-420022

TRUE VALUE $100

TAXABLE VALUE $40

PARCEL NUMBER 02-420023

TRUE VALUE $2,200

TAXABLE VALUE $770

PARCEL NUMBER 02-420024

TRUE VALUE $4,500

TAXABLE VALUE $1,580

PARCEL NUMBER 02-420025

TRUE VALUE $37,400

TAXABLE VALUE $13,090

PARCEL NUMBER 02-420197

TRUE VALUE $6,500

TAXABLE VALUE $2,280

PARCEL NUMBER 02-420198

TRUE VALUE $17,000

TAXABLE VALUE $5,950

PARCEL NUMBER 02-420406

TRUE VALUE $1,800

TAXABLE VALUE $630

PARCEL NUMBER 02-420407

TRUE VALUE $3,900

TAXABLE VALUE $1,370

PARCEL NUMBER 02-420426

TRUE VALUE $3,100

TAXABLE VALUE $1,090

PARCEL NUMBER 02-420447

TRUE VALUE $23,700

TAXABLE VALUE $8,300

PARCEL NUMBER 02-420643

TRUE VALUE $300

TAXABLE VALUE $110

PARCEL NUMBER 02-420644

TRUE VALUE $2,900

TAXABLE VALUE $1,020

AL GAMMARINO, (et. al.),	)	CASE NO(S). 2018-622, 2018-753, 2018-938, 2018-939, 2018-940, 2018-941, 2018-942, 2018-943, 2018-944, 2018-945, 2018-946, 2018-972, 2018-973, 2018-974, 2018-1301
Appellant(s),	)	
vs.	)	
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
Appellee(s).	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AL GAMMARINO
OWNER
3020 GLENFARM COURT
CINCINNATI, OH 45236

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

CATHY GAMMARINO, TRUSTEE
Represented by:
CATHY GAMMARINO
TRUSTEE
3020 GLENFARM COURT
CINCINNATI, OH 45236

CHARLES J. GOODALL
OWNER
7837 PLAINFIELD RD
CINCINNATI, OH 45236

CARMELA GAMMARINO
3684 EAST GALBRAITH ROAD
CINCINNATI, OH 45236

ANTHONY GAMMARINO
9712 CULPEPPER COURT
CINCINNATI, OH 45231

Entered Monday, September 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Al Gammarino appeals from fifteen decisions of the Hamilton County Board of Revision ("BOR") valuing the subject properties for tax year 2017. This board held a hearing on March 18, 2019, but only Mr. Gammarino appeared. We now decide these cases on the notices of appeal, the transcripts certified by the auditor, this board's hearing record ("H.R."), Mr. Gammarino's exhibits, and the auditor's written argument.

[2] Before turning to the merits, we address four preliminary issues. First, the auditor alleges many of Mr. Gammarino's filings and arguments should be stricken because he engaged in the unauthorized practice of law. Auditor's Br. at 14. However, this board does not find Mr. Gammarino has engaged in the unauthorized practice of law; therefore, we deny the auditor's request to strike Mr. Gammarino's legal arguments and filings in this case. This board denied a nearly identical motion earlier in this case. See *Gammarino v. Hamilton Cty. Bd. of Revision* (Interim Order, Nov. 16, 2018), BTA No. 2018-622, unreported. We see no reason to deviate from that prior denial. See also R.C. 5713.19 (any property owner in the county has standing to challenge values); *Gammarino v. Hamilton Cty. Bd. of Revision*, 84 Ohio St.3d 155 (1998) (permitting Mr. Grammarino's benign practice of characterizing himself as "trustee" although no trust exists). The parcels in this case are either owned by Mr. Gammarino, his spouse, his son, or some combination thereof. As a county property owner, Mr. Gammarino has statutory standing to challenge the valuation of each parcel, which includes the right to make legal arguments on his own behalf.

[3] Second, Mr. Gammarino has a pending motion asking this board to require the BOR to certify color photographs Mr. Gammarino offered at the various BOR hearings. The BOR objected to the motion stating it was required by this board's rules to certify the pictures to this board electronically and it did so, albeit in black and white. We agree the BOR satisfied its

duties to certify an accurate record of the proceedings below. Therefore, we overrule the motion. We note Mr. Gammarino is not prejudiced because he could have submitted the photographs at this board's hearing (and it appears he did so in large part). Additionally, as discussed below, we do not find the photographs to be credible and probative evidence of value. Third, Mr. Gammarino argues the auditor failed in his duty to physically inspect the property because the auditor used a mass appraisal system. H.R. at 14-16. Notably, the BOR was not represented at the hearing nor did Mr. Gammarino subpoena a party to testify to that issue. Mr. Gammarino also cites no law that permits this board to disregard an auditor's value simply because the auditor did not physically inspect the property. Nothing in the record shows the auditor was derelict in his responsibilities. At best, Mr. Gammarino's arguments call into question the "presumption of regularity" this board affords the auditor (even if that were true). *Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 12, 2018), BTA No. 2017-1025, unreported. Accordingly, this board gives Mr. Gammarino's argument against presumed regularity the weight we find appropriate in each case. Mr. Gammarino has also filed a motion to strike certain filings by the auditor. We find the motion without merit and deny it.

[4] Fourth, the auditor urges this board to disregard Mr. Sears' appraisals and testimony for failure to comply with R.C. 5715.19(G). That statute reads as follows:

> A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

[5] However, the appraisal reports presented to this board were amended after the respective BOR hearings. Moreover, Mr. Sears was also able to testify to the value as of tax-lien date, which does not appear would be barred by R.C. 5715.19(G). The objection is denied.

[6] While we address each property below, we begin by surveying our standard of review. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[7] We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458,n2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[8] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision* ,

47 Ohio St.3d 23, 25 (1989). While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence, the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

[9] In the absence of a qualifying sale, we turn to appraisal evidence. In most of these cases, Mr. Gammarino presented the testimony of appraiser Ron Sears and other evidence of value. This board is vested with wide discretion in determining the weight to be given to appraisals and other evidence. See *Bartels v. Cuyahoga Cty. Bd. of Revision* (Apr. 22, 2019), BTA No. 2018-2127, unreported. We note many of Mr. Sears' appraisals state his opinion of value is not as of tax-lien date. He clarified at this board's hearing that this was a software issue, and he stated all of his appraisals were as of the tax-lien date, January 1, 2017.

[10] Mr. Gammarino also provided photographs and other evidence to establish that each property suffers from negative characteristics. However, the Supreme Court has been clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick* at 4 (citing*Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). While those negative characteristics could conceivably affect value, a party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶ 7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*, supra, at ¶ 7). Accordingly, we do not find that evidence to be probative to the extent it is not quantified in an appraisal.

[11] We now discuss each property in detail. All are single-family residences.2018-973, BTA Ex. A (2964 West Tower Avenue)

[12] This property is located at 2964 West Tower Avenue in Cincinnati. The auditor valued this subject at $117,260 for tax year 2017, and Mr. Gammarino filed a decrease complaint with an opinion of value at $50,000. Mr. Gammarino offered to the BOR and to this board the appraisal of Mr. Sears who valued the property at $46,000. The auditor's appraiser, Randall Cain, testified Mr. Sears' comparables were not actually comparable. He testified Mr. Sears' comparables were in very different neighborhoods from the subject. He also noted Mr. Sears' adjustments were inconsistent. For example, Mr. Sears made no adjustment for the difference in square footage despite the fact his comparables vary from the subject. Mr. Cain also presented data from properties much closer to the subject, which Mr. Cain argued should have been used.

[13] Upon review, we agree with Mr. Cain's appraisal review that better comparables were available and Mr. Sears' adjustments were inconsistent. Therefore, we must reject Mr. Sears' opinion of value as well as Mr. Gammarino's evidence of negative characteristics. We are mindful of our obligation to independently review the BOR's reduction. This board is unable to determine a principled and supported reason for that reduction. See *Sapina*, supra. We note the auditor's brief urges this board to reinstate the auditor's value arguing the BOR's reduction was arbitrary. We agree, and order the subject valued as follows for tax year 2017:

PARCEL NUMBER 248-0001-0030

TRUE VALUE

$117,260

TAXABLE VALUE

$41,041

2018-972, BTA Ex. B (3684 East Galbraith Road)

[14] This property is located at 3684 East Galbraith Road in Cincinnati. The auditor valued

this property at $124,270 for tax year 2017. Mr. Gammarino filed a decrease complaint with opinion of value of $71,000. He later offered a sales comparison approach appraisal by Mr. Sears, who concluded to a value of $30,000. Auditor's appraiser Susan Spoon provided a report arguing no change was warranted. The BOR rejected Mr. Sears' appraisal finding it was not credible but did lower the value to $100,840, based on a change in condition classification. Mr. Gammarino also presented a number of documents indicating the subject may suffer from some negative characteristics.

[15] Having reviewed the appraisal, we cannot find Mr. Sears' appraisal to be credible. First, Mr. Sears found the house on the property was of no value and appraised the subject as a vacant lot. We do not find sufficient evidence in the record to justify the proposition the home has absolutely no value. Second, instead of using similar vacant land comparables, he found nearby non-vacant properties then summarily adjusted each downward by $100,000. This board is unable to determine that method creates an accurate value for the property. Even if no land sales were available in the subject's neighborhood, we question if Mr. Sears should have considered land sales further away from the subject's neighborhood and whether that approach would have rendered a more reliable value. See The Appraisal of Real Estate (14th Ed.2013) 369 (discussing the limitations of the allocation method). Regardless, we find the size of the gross adjustments Mr. Sears made striking. The greater the magnitude of the adjustments, the less reliable the appraisal will be. In *RDSOR v. Knox Cty. Bd. of Revision* (Nov. 17, 2006), BTA No. 2003-B-1743, unreported, this board commented:

> Usually the magnitude of net adjustments is a less reliable indicator of accuracy. The net adjustment is calculated by totaling the positive and negative adjustments and subtracting the smaller amount from the larger amount. A net adjustment figure may be misleading because one cannot assume that any inaccuracies in the positive and negative adjustments will cancel each other out. For example, if a comparable property is 20% superior to the subject in some characteristics and 20% inferior in others, the net adjustment is zero but the gross adjustment is 40%. Another comparable may require several adjustments, all positive or all negative, resulting in a net adjustment of 6%. This property may well be a more

> accurate indicator of the subject's value than the comparable with the 0% net adjustment with large positive and negative adjustments. Several adjustments that are all positive or all negative may be more correct and produce a smaller total gross adjustment than a combination of positive and negative adjustments. The Appraisal of Real Estate, at 447.

[16] We have also held that "when adjustments made to the comparables are significant [they] underscore the vast differences between the subject and the comparables in the report. *Westley v. Lorain Cty. Bd. of Revision* (Nov. 24, 2009), BTA No. 2007-V-675, unreported. Here, Mr. Sears adjusted his comparables by between $99,600 and $109,500. The adjustments require us to find the appraisal is not credible.

[17] We are also mindful of our duty to independently review a BOR's reduction. See *Sapina* , supra. Here, we find support for the reduction based on evidence of condition. We order the property valued as follows for tax year 2017:

PARCEL NUMBER 600-0230-0008

TRUE VALUE

$100,840

TAXABLE VALUE

$35,290

2018-945, BTA Ex. C (3700 East Galbraith Road)

The auditor valued this property at $112,790 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $80,000. He presented the appraisal and testimony of Mr. Sears, who concluded to a value of $90,000 using the sales comparison approach. Ms. Spoon provided a report to the BOR arguing no change was justified. However, she did not develop an appraisal or provide market data to dispute Mr. Sears' appraisal. The BOR ultimately rejected Mr. Sears appraisal and retained the auditor's value.

We do not find Mr. Sears' appraisal to be credible evidence of value given the significant adjustments in the report, which suggests to this board the comparables are too dissimilar to be

credible evidence of value. We likewise do not find evidence of negative

characteristics to warrant an adjustment. See *Throckmorton*, supra. Accordingly, we see no reason to deviate from the auditor's value as retained by the BOR or as follows for tax year 2017:

PARCEL NUMBER 600-0230-0042

TRUE VALUE

$112,790

TAXABLE VALUE

$39,480

2018-946, BTA Ex. D (2511 Mariposa Avenue)

The auditor valued this property at $30,430 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $14,720. In support, he relied primarily on Mr. Sears' appraisal. Mr. Sears concluded to a value of $13,000 using the sale comparison approach. Matthew Lemle, the auditor's appraiser, filed a report arguing no change should be made. However, Mr. Lemle did not develop a full appraisal. The BOR ultimately retained the auditor's value. Like the property at 2964 West Tower Avenue, we are unable to find the appraisal is credible given the magnitude of the adjustments. Accordingly, we order the property valued as follows for tax year 2017:

PARCEL NUMBER 510-0051-0023

TRUE VALUE

$30,430

TAXABLE VALUE

$10,650

2018-944, BTA Ex. E (3020 Glenfarm Court)

The auditor valued this property at $446,600 for tax year 2017, and Mr. Gammarino filed a decrease complaint with an opinion of value at $350,000. Both Mr. Sears and Ms. Spoon developed sales comparison appraisal reports for this subject. We are unable to find Ms. Spoon's appraisal is the best evidence of value because, as a BOR member noted, two of the comparables appear to have been built by custom builders and are of higher quality than the subject. We are unable to find Mr. Sears' appraisal is the best evidence of value because we do not find credible, tangible support for the large $98,000 downward adjustment for condition contained in his comparison grid and addendum. See also *Gallick*, supra (dollar-for-dollar adjustments do not always correlate to value).

We are mindful of our duty to independently review the BOR's change in value. We find the record lacks sufficient, credible evidence to support the increase from $446,6000 to $468,600. Accordingly, we order the auditor's value reinstated or as follows for tax year 2017:

PARCEL NUMBER 526-0110-0157

TRUE VALUE

$446,600

TAXABLE VALUE

$156,310

2018-941, BTA Ex. F (1708 Goodman Avenue)

The auditor valued this property at $52,610 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $35,430. He relies primarily on Mr. Sears' appraisal. Mr. Sears concluded to a value of $25,000 using the sales comparison approach. David Nitzsche, the auditor's appraiser, filed a report arguing no change should be made. However, he did not develop a full appraisal. The BOR ultimately retained the auditor's value.

We find Mr. Sears' appraisal to be the best evidence of value. He developed a sales comparison approach appraisal using three comparables of similar age less than one-half mile from the subject. He made relatively few adjustments, and we lack market data to show more comparable properties are available. Accordingly, we order the property valued as follows for tax year 2017:

PARCEL NUMBER 595-0005-0346

TRUE VALUE

$25,000

TAXABLE VALUE

$8,750

2018-939, BTA Ex. G (1406 Shenandoah Avenue)

The auditor valued this property at $62,240 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $27,370. He later presented the appraisal of Mr. Sears, who concluded to a value of $32,000 using the sales comparison approach. Thaddeus Kowal presented a report to the BOR, but he did not develop a full appraisal.

We find Mr. Sears' appraisal to be the best evidence of value. He developed a sales comparison approach appraisal using three comparables of similar age close geographically to the subject. He made relatively few adjustments, and we lack market data to show more comparable properties are available. Accordingly, we order the property valued as follows for tax year 2017:

PARCEL NUMBER 117-0A07-0039

TRUE VALUE

$32,000

TAXABLE VALUE

$11,200

2018-942, BTA Ex. H (2967 Atwater Drive)

The auditor valued this property at $50,070 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $9,410. He later presented the appraisal of Mr. Sears, who concluded to a value of $14,000 using the sales comparison approach. Mr. Lemle supplied a report stating no change should be made, but he did not develop a full appraisal.

Having reviewed the record, we are unable to find Mr. Sears' adjustments were consistent on this property or are supported. He significantly adjusted his comparables downward but we find no credible evidence to support the significant downward adjustment or why he felt a $10,000 adjustment for condition was an appropriate figure. We likewise do not find Mr. Gammarino's evidence of negative characteristics to warrant an adjustment. For these reasons, we see no reason to deviate from the auditor's value as retained by the BOR, or as follows for tax year 2017:

PARCEL NUMBER 510-0052-0518

TRUE VALUE

$50,070

TAXABLE VALUE

$17,520

2018-943, BTA Ex. I (5419 Newfield Avenue)

The auditor valued this property at $60,710 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $21,200. He later presented the appraisal of Mr. Sears, who concluded to a value of $35,000 using the sales comparison approach. Mr. Lemle

supplied a report stating no change should be made, but he did not develop a full appraisal.

We find Mr. Sears' appraisal to be the best evidence of value. He chose three comparables within one mile of the subject. He made relatively few adjustments, and net adjustments were generally low. For these reasons, we order this property valued as follows for tax year 2017:

PARCEL NUMBER 119-0002-0456

TRUE VALUE

$35,000

TAXABLE VALUE

$12,250

2018-1301, BTA Ex. J (8308 St. Clair Court)

The auditor valued this property at $76,410 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $38,800. Mr. Gammarino relies almost entirely on evidence of negative characteristics. We find no adjustment is warranted based on that evidence. See *Throckmorton*, supra. Mr. Gammarino also presented unadjusted market data. However, raw sales data is generally insufficient to warrant an adjustment. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported. Because Mr. Gammarino has not provided competent and probative evidence of value in support of his supported value, we find he has not carried his burden.

We are mindful of our duty to independently review the BOR's reduction from $76,410 to $72,600. We find that reduction is not supported by probative evidence. Therefore, we reinstate the auditor's value as follows for tax year 2017:

PARCEL NUMBER 600-0202-0514

TRUE VALUE

$76,410

TAXABLE VALUE

$26,740

2018-622, BTA Ex. K (7837 Plainfield Road)

The auditor valued this property at $83,710 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $22,000. Mr. Gammarino primarily relies on a January 2015 estate sale and non-tax-lien dated appraisal report. The sale occurred less than two years prior to the tax-lien date, and this board had recognized estate sales create a presumption of value absent "specific evidence" the sale was not arm's-length. *Zimmer v. Stark Cty. Bd. of Revision* (Nov. 6, 2017), BTA No. 2017-622, unreported. Accordingly, Mr. Gammarino presented a qualifying sale, which shifts the burden of rebuttal to any opposing party. However, we find no such rebuttal evidence in the record.

For these reasons, we order this property valued in accordance with the sale for tax year 2017:

PARCEL NUMBER 609-0013-0023

TRUE VALUE

$22,000

TAXABLE VALUE

$7,700

2018-940, BTA Ex. L (6141 West Fordham Place)

The auditor valued this property at $76,060 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $40,000. He later presented the appraisal of Mr.

Sears, who concluded to a value of $40,000 using the sales comparison approach. The BOR reduced the value to $72,250, but this board is unable to ascertain a principled reason for that reduction. The auditor's brief urges this board to reinstate the auditor's value.

First, we do not find Mr. Sears' appraisal to be credible evidence of value given the substantial adjustments in his report, as we found in other cases discussed above. We note Mr. Kowal's report shows more comparable properties were available. We likewise do not find a reduction is warranted based solely on negative characteristics.

We are mindful of our duty to independently review the BOR's partial reduction based on a condition change from fair to poor. We find credible support for that reduction, and order the property valued as follows for tax year 2017:

PARCEL NUMBER 602-0006-0096

TRUE VALUE

$72,250

TAXABLE VALUE

$25,290

2018-938, BTA Ex. M (10128 Wayne Avenue)

The auditor valued this property at $40,330 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $9,000. He later presented the appraisal of Mr. Sears, who concluded to a value of $12,000 using the sales comparison approach. The BOR reduced the value to $38,470, based on a discrepancy on the parcel card.

First, we do not find Mr. Sears' appraisal to be credible evidence of value given the significant adjustment for condition. As noted above, we do not find his calculation is supported. We likewise do not find a reduction is warranted based on negative characteristics.

However, we do find support for the BOR's reduction based on a discrepancy on the parcel card. We order the property valued as follows for tax year 2017:

PARCEL NUMBER 598-0020-0201

TRUE VALUE

$38,470

TAXABLE VALUE

$13,460

2018-974, BTA Ex. N (9712 Culpepper Court)

The auditor valued this property at $62,620 for tax year 2017. Mr. Gammarino filed a decrease complaint with an opinion of value at $18,050. Mr. Gammarino relies on negative characteristics and a 2009 sale. The BOR reduced the value to $43,830 based on change in condition.

We find the 2009 sale is too remote. See *Gallick,* supra. We also do not find an adjustment is warranted based on negative characteristics. We further find the BOR's reduction based on change in condition is warranted and order the property valued as follows for tax year 2017:

PARCEL NUMBER 590-0320-0185

TRUE VALUE

$43,830

TAXABLE VALUE

$15,340

2018-753, BTA Ex. O (725 Mohican Drive)

The auditor valued this property at $97,680, and Mr. Gammarino filed a decrease complaint with an opinion of value at $67,200. Mr. Gammarino based his value on evidence of

negative characteristics. However, we find no probative evidence of value in support of this value. At the urging of Ms. Spoon, the BOR reduced the value based on a condition change. We find support for that reduction and order the property valued in accordance with that reduction for tax year 2017:

PARCEL NUMBER 621-0008-0192

TRUE VALUE

$87,900

TAXABLE VALUE

$30,770

OHIO BOARD OF TAX APPEALS

PETER J MITCHELL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-452
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PETER J MITCHELL
Represented by:
PETER MITCHELL
31855 WOODSDALE LN.
SOLON, OH 44139

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, October 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 952-11-006, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and record certified by the BOR pursuant to R.C. 5717.01.

[2] The fiscal officer assessed the subject property at $487,500 for tax year 2018. The property owner filed a complaint with the BOR, which objected to the subject property's initially assessed value, and proposed that it be valued at $456,100 instead. According to the complaint, the property owner asserted that comparable sales on two streets, including the street on which the subject property was located, indicated that he would probably be unable to sell

the subject property for $456,100. Although the BOR scheduled the matter for hearing, the property owner neither appeared to testify nor submitted evidence in support of the complaint. As a result, the BOR issued a decision that retained the subject property's value and this appeal ensued. Neither the property owner nor the county appellees availed themselves of the opportunity to submit evidence at a hearing before this board.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn.. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[4] Upon review, we find that the property owner failed to satisfy the evidentiary burden before the BOR and before this board. The property owner submitted no evidence in support of his request to value the subject property at $456,100. To be sure, an owner is entitled to provide an opinion of value. See *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). While an owner might be an expert in the property under review, an owner might not be an expert in valuation or the market. The Supreme Court has also held "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*,

76 Ohio St.3d 29, 32 (1996). Here, the property owner's opinion is unsupported by any tangible evidence.

[5] Even if we had had the comparable sales that the property owner referenced on the complaint, we likely would not have found them to be competent, credible, and probative evidence of the subject property's value. We have repeatedly held that unadjusted comparable sales data is an insufficient basis to determine real property value because such information fails to adequately to consider and to account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. See, also *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."); *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

[6] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to satisfy the evidentiary burden before the BOR and before this board. We conclude, therefore, that the subject property's value shall remain as initially assessed.

[7] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2018:

TRUE VALUE: $487,500

TAXABLE VALUE: $170,630

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-2105 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

H. EUGENE FLETCHER
213 WOODLAND AVENUE
COLUMBUS, OH 43203

Entered Tuesday, October 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the values of the subject properties, parcels 010-015451-00, 010-015459-00, and 010-025225-00, for tax years 2017 and 2018. We proceed to consider this matter based upon the notice of appeal and record certified by the BOR pursuant to R.C. 5717.01.

The property owner filed a complaint with the BOR, which objected to the subject properties' initially assessed values: $60,500 for parcel 010-015451-00, $60,500 for parcel

010-015459-00, and $580,000 for parcel 010-025225-00. The BOE filed a countercomplaint, which objected to the requests. The BOR held a hearing on the issue of the subject properties' values, at which both the property owner and BOE submitted argument and/or evidence in support of their respective positions. In support of his complaint, the property owner submitted the appraisal report and testimony of appraiser Deno Duros, who opined the value of parcel 010-025225-00, an old movie theater that had been rehabilitated for a different use, to be $511,000 as of the tax lien date. Duros was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. It appears that either the property owner or Duros submitted excerpts from previous appraisal reports performed by John Duros, which opined the parcel's value for various dates in 2014 and 2015. As to the two remaining parcels, parcels 010-015451-00, 010-015459-00, which the property owner described as duplexes or "doubles," he argued that they were being taxed differently and at a higher rate than similar neighboring properties. Instead of valuing those two parcels at $60,500 each, the property owner argued that they should be valued collectively at $60,000 because that was the price that he paid for them at a sheriff sale.

At the BOR decision hearing, the BOR members voted to accept Duros' $511,000 opinion of value. However, it appears that the BOR applied his opinion of value to all three parcels, for a total of $511,000, instead of accepting his opinion of value as to parcel 010-025225-00 only. As a result, the BOR issued a decision that valued parcel 010-025225-00 at $390,000, parcel 010-015451-00 at $60,500, and parcel 010-015459-00 at $60,500. This appeal ensued.

Though this matter was scheduled for a merit hearing, the BOE waived its opportunity to submit additional evidence in support of this appeal and the property owner was precluded

from submitting additional evidence as a sanction for failing to comply with discovery rules. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Interim Order, Apr. 22, 2019), BTA No. 2018-2105, unreported. As such, we will decide this matter based upon the arguments and evidence submitted at the BOR hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

As an initial matter, we cannot affirm the BOR's decision to value parcel 010-025225-00 at $390,000. The record is devoid of any competent, credible, and probative evidence to support valuing the parcel at $390,000. Nothing in Duros' appraisal report or testimony supports such value. Nothing in the BOR hearing merit and decision hearings supports such value. It appears that the BOR may have accepted Duros' appraisal report as the value for all three parcels as one economic unit, which would be improper given that parcel 010-025225-00 was a former movie theater on Main Street and parcels 010-015451-00 and 010-015459-00 were duplexes on Livingston Avenue. As a consequence, we cannot affirm the BOR's decision as to parcel 010-025225-00. See *South-Western City School Dist. Bd. of Edn. v.*

Franklin Cty. Bd. of Revision, 152 Ohio St.3d 122, 2017-Ohio-8384,at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 35. Here, the BTA assigned a value that *** could be achieved only through artifice." (Parallel citations omitted.)). Compare *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237.

We begin our analysis with Duros' appraisal report and testimony for parcel 010-025225-00 only. Under the income approach, he developed two branches of analysis to determine the parcel's value. Under the first branch, he relied upon the parcel's actual and asking rental income from the beauty salon on the first floor and vacant apartment on the second floor of the building, $36,000. To that number, he added $19,860 for vacancy and concluded to a gross income of $55,860. He deducted $2,793 for vacancy and credit loss and $37,721 for expenses, before concluding to net operating income of $15,346, which he capitalized at 10%. In doing so, he concluded to a value of $153,000 based upon the parcel's actual experience in the market. Under the second branch, he allegedly relied upon market information to determine market rent of $5 per square foot, which he then applied to the parcel's 19,028 square feet of rental area, to conclude to gross rental income of $95,140. From that number, he deducted $9,514 for vacancy and credit loss and $29,721 for expenses, before concluding to a net operating income of $55,961, which he then capitalized at 10.75%. In doing so, he concluded to a value of $521,000.

Under the sales comparison approach, he compared the parcel's features with the features of other properties that recently sold in the same vicinity as the parcel. After adjusting for differences between the properties, he determined that the parcel would sell on the open

market at $26.80 per square foot, which he then applied to the parcel's 19,028 square feet of rentable area. In doing so, he concluded to an indicated value of $511,000. In reconciling the various indicated values, he placed most weight on the sales comparison approach to value and concluded the parcel's value to be $511,000 as of the tax lien date.

Where, as here, when a party relies upon an appraiser's opinion of value, this board may accept all, part, or none of the appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision,* 85 Ohio St.3d 609 (1999). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. Recently, the Supreme Court has reaffirmed that "[w]hen the BTA 'reviews appraisals, [it] is vested with wide discretion in determining the weight to be given to the evidence and the credibility of the witnesses that come before it." *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 152 Ohio St.3d 548, 2018-Ohio-919, citing *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, at ¶9.

Here, we are constrained to conclude that Duros' appraisal report and testimony are not competent, credible, or probative evidence of value for parcel 010-025225-00. There is a plethora of inconsistencies between his appraisal report and testimony. For example, at the BOR hearing, Duros claimed that he toured the parcel and confirmed that the building had been renovated into office use, particularly medical office use. However, a review of his appraisal report noted that "[t]he subject is open and operating beauty salon with a vacant second floor one-bedroom apartment." Statutory Transcript at Duros Appraisal Report, pg. 17. An extensive

review of the BOR hearing record fails to glean any discussions about either the operating beauty salon or vacant apartment. Moreover, under the second branch of his income approach, there was no discussion of the market for beauty salons or apartments. As a result of these pertinent inconsistencies, we are wholly unable to determine whether Duros properly appraised parcel 010-025225-00 as it existed on tax lien date. In fact, we are unable to determine how the building existed on the tax lien date as the result of the inconsistencies.

Furthermore, we find the data and methodologies Duros used to derive his conclusion of value to be unreliable. Under the first branch of the income approach, which relied upon the parcel's own experience in the market, it is unclear why he would add $19,860 for vacancy to his calculation of potential gross income. It is also unclear why he deducted 5% or $2,793 for vacancy and credit loss when the parcel was allegedly 50% vacant, i.e., the one-bedroom apartment on the second floor, at the time. Under the second branch of the income approach, though Duros claimed such analysis relied upon market information, the appraisal report is completely devoid of any market information relating to income, expenses, vacancy, credit loss, and capitalization rate relevant to the tax lien date. See *Olmsted Falls Village Assn. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). For example, Duros opined that market rent would be $5 per square foot; however, there are no lease comparables contained in the appraisal report to support such conclusion. We have previously stated that "[t]he evidence of actual income, while the beginning point of any valuation finding, see Ohio Adm. Code 5703-25-07(D)(2) (contract rent of a given property is to be considered), is not, in itself, determinative of value. The contract rents must reflect the market in which the property is found. The record before this board contains no market survey, so this board cannot compare the rents collected from the subject property with market rents." See *North Canton City School*

Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision (Jan. 25, 2011), BTA No. 2008-M-42, unreported at 6.

Likewise, we find the sales comparison approach lacks credibility. At the BOR hearing, Duros discussed six comparable sales that he claimed to have relied upon to develop the sales comparison approach. However, a review of his adjustment grid for the comparable sales only includes three comparable properties, not six comparable properties. As a result, his conclusion of sales price per square foot, $26.80, is unsupported. Duros testified that he only verified comparable sale one with either a buyer or seller involved and, instead, relied upon information relied upon in the Haines Report, an Ohio based real-estate research site, and the county auditor's office. It should be noted that, according to his comparable sale adjustment grid, Duros did not verify comparable sale one with anyone involved in the sale, despite his testimony to the contrary. See Statutory Transcript at Addendum, Adjustment Grid. This board has previously rejected reliance on unverified sale information. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 13, 2013), BTA Nos. 2011-Q-550, et seq., unreported; *Overstreet v. Hamilton Cty. Bd. of Revision* (Feb. 15, 2002), BTA No. 2001-V-639, unreported. The Appraisal of Real Estate (14th Ed.2013) also comments on the need to verify information regarding the comparable sales "to make sure that the sale occurred under conditions that meet the definition of value based in the appraisal." Id. at 125. For example, there is no indication that the Duros verified that the information contained in the Haines Report documents was accurate, which includes a disclaimer that suggests readers take additional steps to confirm the accuracy of the provided information. Nothing in the Haines Report documents provides information about the arm's-length character of the transactions. Indeed, this board has previously declined to find value in accordance with comparable sales

that were not arm's-length in nature. See, e.g., *Allen v. Hamilton Cty. Bd. of Revision* (May 22, 2012), BTA No. 2010-Q-829, unreported; *Withers v. Montgomery Cty. Bd. of Revision* (Mar. 6, 2012), BTA No. 2009-Q-3113, unreported. Furthermore, the Appraisal of Real Estate notes that it is essential for an appraiser to inquire whether any concessions were involved in the comparable sales. As another example, there is no indication that Duros made the necessary inquiry into this element of the comparable sales, as supported by his notation of "None known" in the adjustment grid of his appraisal report.

As to the remaining two parcels, parcels 010-015451-00 and 010-015459-00, no documentary evidence was submitted in support of reductions to their values. Though the property owner argued that these parcels should be valued consistent with the $60,000 total price at which he paid for them at a sheriff sale, we do not find such sale to be probative evidence of value. Not only is this sale presumptively invalid because it was a forced sale, but it is presumptively remote because it occurred in September 2002, more than fourteen years before the tax lien date of January 1, 2017. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, at ¶2 ("taxing authorities to presume that [a forced] sale price is not a voluntary, arm's-length transaction"); *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588 (holding that a sale occurring more than 24 months before the tax-lien date is generally not recent). We find, therefore, that the BOR properly retained the values for parcels 010-015451-00 and 010-015459-00.

We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the property owner's appraisal evidence was not competent,

credible, and probative, or minimally plausible, evidence of the value of parcel 010-025225-00. The Duros appraisal report is replete with substantive errors that render it unreliable. Furthermore, because the information contained in the appraisal report is so unreliable, we find we are unable to rely upon it to independently determine the value of parcel 010-025225-00. As a result, we are constrained to reinstate the parcel's initially assessed value. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907, ¶35 (reinstating county auditor's original valuation when "the record did not contain sufficient evidence for the BTA to perform an independent valuation of the property"). We also find the record devoid of any evidence to support reductions to the values of parcels 010-015451-00 and 010-015459-00.

It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2017:

PARCEL NUMBER 010-015451-00

TRUE VALUE: $60,500

TAXABLE VALUE: $21,180

PARCEL NUMBER 010-015459-00

TRUE VALUE: $60,500

TAXABLE VALUE: $21,180

PARCEL NUMBER 010-025225-00

TRUE VALUE: $580,000

TAXABLE VALUE: $203,000

OHIO BOARD OF TAX APPEALS

ATIT LLC DBA MOTEL 6, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1076
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ATIT LLC DBA MOTEL 6
Represented by:
JIGNESH SHAH
OWNER
32751 LORAIN RD
NORTH RIDGEVILLE, OH 44039

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Tuesday, October 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with either this board or the county board of revision. This matter is decided upon the motion and appellant's response, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the

BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of appeal was filed with this board thirty-eight days after the mailing of the BOR's decision. Further, the record does not demonstrate that appellant filed such notice with the BOR prior to the filing of the motion to dismiss. Indeed, the first notice appellant provided to the BOR appears to have been on September 30, 2019, in its response to the motion. Such notice was filed well beyond the statutory thirty-day period.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BRIAN RITTER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1539
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
OTTAWA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - BRIAN RITTER
OWNER
846 NEVIN ST.
AKRON, OH 44310

For the Appellee(s) - OTTAWA COUNTY BOARD OF REVISION
Represented by:
JAMES VANEERTEN
OTTAWA COUNTY PROSECUTING ATTORNEY
OTTAWA COUNTY
315 MADISON ST., 2ND FLR
PORT CLINTON, OH 43452

Entered Tuesday, October 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

T NORTHGATE MALL, LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1302 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - T NORTHGATE MALL, LLC
Represented by:
HOWARD MILLS
TREASURER
T NORTHGATE MALL, LLC
16600 DALLAS PKWY. #300
DALLAS, TX 75248

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, October 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DAYTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-45 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAYTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

AMERCO REAL ESTATE COMPANY
P.O. BOX 29046
PHOENIX , AZ 85038

Entered Tuesday, October 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered upon the Dayton City Schools Board of Education's ("BOE") motion to remand with instructions to dismiss the underlying complaint. Neither the county appellees nor the appellee property owner have responded. We therefore proceed to decide the matter upon the motion and the statutory transcript certified pursuant to R.C. 5717.01.

[2] The statutory transcript indicates that the underlying complaint against the valuation of parcel numbers R72-01609-0028 et al., was filed by Tammy Harris (of Anderson & Associates),

on behalf of owner Amerco Real Estate Company. Attached to the complaint was a "letter of authorization" from U-Haul International, Inc., appointing Anderson & Associates to act as U-Haul's "agent and attorney-in-fact in all matters relating to assessments of Ad Valorem Taxes ***." The BOE filed a countercomplaint. Although the Montgomery County Board of Revision ("BOR") failed to certify an audio recording of its hearing on the complaint to this board, as is required by R.C. 5717.01 and as instructed in this board's August 2, 2019 order in this matter, it is apparent from the BOR notes that the BOE objected to the ability of Ms. Harris and/or Anderson & Associates to file on behalf of the owner, and moved to dismiss the complaint for lack of jurisdiction. The record does not indicate that the BOR made any ruling on the motion, and, instead, issued a decision finding value for the subject parcels.

[3] The BOE appealed to this board and again moves to dismiss the complaint for lack of jurisdiction. In deciding the motion, we first turn to the Ohio Supreme Court's decision in *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244, where is explained who may file a complaint against valuation on behalf of another:

> R.C. 5715.19(A) "'establishes the jurisdictional gateway to obtaining review by the boards of revision,'" *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ***, ¶ 11, quoting *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, ***, ¶ 10, and provides that "[a]ny person owning taxable real property in the county *** may file such a complaint regarding any such determination [including valuation] affecting any real property in the county ***." And according to our case law, if someone other than the property owner prepares and files the complaint on behalf of the owner, that person must be an attorney or authorized by law to make such filing.

(Parallel citations omitted.) Id. at ¶11. R.C. 5715.19(A) specifies several non-attorney persons who may file on behalf of a property owner, including persons with designations from professional assessment organizations, appraisers, real estate brokers, and public accountants. Any non-authorized agent filing on behalf of an owner engages in the unauthorized practice of law by doing so. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997).

[4] Here, there is no indication that Ms. Harris is an attorney, appraiser, public accountant,

real estate broker, or other individual specified in R.C. 5715.19(A). We therefore find that she is not authorized to file a valuation complaint on behalf of Amerco and engaged in the unauthorized practice of law. (We note the BOE argues that U-Haul, not Amerco, granted authorization for Anderson & Associates to file the complaint; however, because we find that neither Ms. Harris nor Anderson & Associates is authorized to file, such argument is moot.) "R.C. 5715.19(A) establishes the jurisdictional gateway to obtaining review by the boards of revision ***." *Toledo Public Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, ¶10. Because Ms. Harris is not an attorney and is not otherwise authorized to file by R.C. 5715.19(A), we find the underlying complaint failed to properly vest jurisdiction in the board of revision.

[5] Accordingly, the BOE's motion is well taken. This matter is hereby remanded the Montgomery County Board of Revision with instructions to vacate its December 6, 2018 decision and dismiss the complaint and countercomplaint, see *C.I.A. Properties v. Cuyahoga Cty. Aud.*, 89 Ohio St.3d 363 (2000), the practical effect being reinstatement of the auditor's initial value.

OHIO BOARD OF TAX APPEALS

REEVE S J PARKER TRUSTEE, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1326 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REEVE S J PARKER TRUSTEE
Represented by:
SHANNON CIANCIOLA
ATTORNEY
MANNING & CLAIR, ATTORNEYS AT LAW
38040 EUCLID AVENUE
WILLOUGHBY, OH 44094

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Wednesday, October 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon a motion to dismiss filed by the county appellees asserting appellant failed to file notice of the appeal with the Lake County Board of Revision ("BOR") within the thirty-day statutory period. We decide the matter upon the motion, appellant's response, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

The county argues that appellant has failed to follow the statutory requirements to invoke this board's jurisdiction. This board may only review board of revision decisions where

the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000). R.C. 5717.01 provides that "[a]n appeal from a decision of a county board of revision may be taken to the board of appeals *within thirty days* after notice of the decision of the county board of revision is mailed ***." It further provides that "[s]uch appeal shall be taken by filing of a notice of appeal *** with the board of tax appeals *and with the county board of revision*." The record of this matter indicates that appellant filed notice of the appeal with the BOR on September 9, 2019, i.e., fifty-three days after the BOR mailed its decision.

Appellant argues in response that the failure to timely file was excusable neglect by his counsel and that granting the motion to dismiss would be "hypertechnical." To the contrary, this board has *no* discretion to overlook appellant's failure to timely file with the BOR. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). While appellant directs this board the Supreme Court's decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 128, 2015-Ohio-4304 instructing that tax appeals should not be dismissed on hypertechnical grounds, such case addressed an appeal *from* the Board of Tax Appeals to the Supreme Court under R.C. 5717.04. The court's decisions on appeals *to* the Board of Tax Appeals have been clear. Most recently, in *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746, the court explained:

> Our case law confirms that failure to comply with R.C. 5717.01's dual filing requirements, including the time limits for filing an appeal, "is fatal to the appeal." *Hope*[, supra]; *accord Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192, 194, *** (1989) ("under R.C. 5717.01, an appellant must timely file notices of appeal with the BTA and with the board of revision. If they are not

so filed, the BTA does not obtain jurisdiction to hear the appeal"); *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621, 623, *** (1998) (same). In each of these cases, we held that timely dual filings with the BTA and the county board of revision were necessary to invoke the jurisdiction of the BTA under R.C. 5717.01.

(Parallel citations omitted.) Id. at ¶11. Given that the record in this matter is clear that appellant failed to timely file with the BOR, this board lacks jurisdiction over the appeal.

The county appellees' motion is well taken. This matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

CATHERINE M. & PAUL J. RODJOM, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-804 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CATHERINE M. & PAUL J. RODJOM
OWNER
6500 EDGERTON RD
N. ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, October 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was timely filed with this board and not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal

be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record indicates appellants filed the notice of appeal with this board more than thirty days after the mailing of the BOR's decision. Further, the record does not demonstrate that appellants filed any notice of the appeal with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SAR HOLDINGS III, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-899
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - SAR HOLDINGS III, LLC
Represented by:
DANIEL MCCARTHY
MCCARTHY LAW OFFICE
225 WEST COURT STREET, SUITE 300
CINCINNATI, OH 45202

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID C. DIMUZIO
ATTORNEY AT LAW
DAVID C. DIMUZIO, INC.
810 SYCAMORE STREET, SIXTH FLOOR
CINCINNATI, OH 45202

Entered Wednesday, October 16, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

SAR Holdings III, LLC ("SAR") appeals four decisions of the Hamilton County Board of Revision ("BOR") retaining the auditor's value of the subject properties for tax year 2018. Although SAR selected our small claim's docket in its notice of appeal, we decide the case through our standard docket since the parcels are commercial. See R.C. 5703.021. We decide the case on the notice of appeal, the statutory transcript, and the parties' briefs.

The subject property is composed of four contiguous parcels. SAR obtained the property in 2017 through a related party transfer. The auditor valued the parcels at a combined $365,000 for tax year 2018. SAR filed a decrease complaint with a combined opinion of value at $20,000. The appellee school board filed a countercomplaint asking the BOR to retain the auditor's values. At the BOR hearing, SAR presented the testimony and appraisal of Craig Miller who concluded to a value of $5,000 for one parcel as of January 1, 2017. His report states the differences between the four parcels "are not significant enough to impact value." Accordingly, his opinion was that the four parcels should be valued at a combined $20,000. The school board objected to the appraisal since it was not as of the tax-lien date. Mr. Miller then stated he actually intended to value the property as of January 1, 2018, and he stated the references in the report to January 1, 2017, were typos. The auditor presented the testimony of appraiser Don Ross, who conducted an appraisal review of Mr. Miller's appraisal. He testified to his belief that Mr. Miller selected comparables from the lower end of the range. Mr. Ross also presented documentary evidence purportedly showing better comparables were available. The BOR retained the auditor's value, and SAR appealed.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23). A recent, arm's-length sale constitutes the best

evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. The subject property has not been the subject of any arm's-length sales recent to the tax-lien date. Therefore, we move on to the appraisal evidence before us.

Upon review, we do not find Mr. Miller's appraisal is credible evidence of value for the following reasons. First, the vintage of appraisal matters, and Mr. Miller's report states repeatedly that he prepared the report as of January 1, 2017. Only after the school board objected to the report did Mr. Miller state he actually intended to appraise the property as of January 1, 2018. The as-of date is central to a tax valuation appraisal, and the credibility of a report is substantially damaged when a key feature of the report is supposedly wrong. We also note, as does the school board in its brief, the report was completed in the summer of 2018, long before complaints would be filed for tax year 2018. The school board argues the report's completion date suggests it actually was created for tax year 2017, and we find that argument persuasive absent probative evidence to the contrary. Second, one of the three comparables was an offering, which Mr. Miller says later sold. However, the property sold before Mr. Miller signed the report, again causing us to find the appraisal less credible because the information in the report appears to be stale and incomplete. We also note Mr. Miller made *no* adjustments to

the comparables even though the testimony at the BOR established the subject is in a superior location. Finally, while not all of Mr. Ross' comparables are substantially better, it does appear better properties were available for comparison. See also *Collins v. Hamilton Cty. Bd. of Revision* (May 29, 2012), BTA No. 2009-Y-1156, unreported (finding Mr. Miller's appraisal was not credible when he made significant adjustments for interior condition but never

inspected the interior condition of the subject or the comparables).

Accordingly, we do not find the SAR's appraisal to be credible evidence of value. We see

no reason to deviate from the auditor's values, and find the true and taxable values of the subject parcels, as of January 1, 2018, were as follows:

PARCEL NUMBER 092-0004-0016

TRUE VALUE

$88,330

TAXABLE VALUE

$30,920

PARCEL NUMBER 092-0004-0017

TRUE VALUE

$88,330

TAXABLE VALUE

$30,920

PARCEL NUMBER 092-0004-0018

TRUE VALUE

$88,340

TAXABLE VALUE

$30,920

PARCEL NUMBER 092-0004-0019

TRUE VALUE

$100,000

TAXABLE VALUE

$35,000

OHIO BOARD OF TAX APPEALS

4103 CREST LLC, (et. al.),	)	
	)	CASE NO(S).
Appellant(s),	)	2018-2289, 2018-1338, 2018-1342,
	)	2018-1349, 2018-2290, 2018-2292
vs.	)	
	)	
MONTGOMERY COUNTY	)	(REAL PROPERTY TAX)
BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - 4103 CREST LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Friday, October 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] These matters come before this board upon six notices of appeal filed by the appellant property owners. At the outset, we note that these appeals emanate from three separate complaints against real property valuation filed with the Montgomery County Board of Revision ("BOR"). However, three of the appeals, i.e., BTA Nos. 2018-1338, 2018-1342, and 2018-1349, were filed prior to the BOR's issuance of decisions on the complaints. Such appeals were therefore premature and, as a result, failed to properly vest jurisdiction with this board. We hereby dismiss BTA Nos. 2018-1338, 2018-1342, and 2018-1349. Regardless of such jurisdictional deficiency, it appears appellants properly re-filed appeals, i.e., BTA Nos.

2018-2289, 2018-2290, and 2018-2292, after the issuance of the BOR's decisions on each complaint. We therefore proceed to determine the value of the subject parcels for tax year 2017 upon the notices of appeal, the statutory transcripts filed pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject properties are all four-unit residential properties owned by single-member LLCs, as follows: parcel number R72 160104 0002 (4103 Crest LLC), parcel number E20 24108 0004 (68 Cromwell LLC), and parcel number R72 05802 0045 (279 Hunter LLC). For tax year 2017, the county auditor valued the properties at $44,070, $60,500, and $41,080, respectively. The appellant property owners, through Zachary Zaremba, filed complaints seeking decreases in value based on arm's-length sales in 2008, 2009, and 2012. Mr. Zaremba's relationship to the property owners is not clear; however, he appeared at the BOR hearing and presented evidence in support of the complaints, including documentation of the sales and comparable sales data. After considering the sale evidence submitted, the BOR determined that no changes in value were warranted.

[3] Appellants thereafter appealed to this board. At this board's hearing, Gary Zaremba testified regarding the sales, indicating that for each sale, both parties were represented by brokers, the property was listed on the MLS, and that the transactions were arm's-length in nature. He further indicated that no substantial changes were made to 4103 Crest or 68 Cromwell after the purchases, but that approximately $10,000 of improvements were made to 279 Hunter after purchase.

[4] Before we turn to the valuation of the subject parcels, we first address the jurisdictional sufficiency of the underlying complaints. Each of the complaints were filed by Zachary Zaremba as the agent of the owner. Mr. Zaremba is not an attorney. While a member of an LLC may file a complaint on its behalf, Gary Zaremba testified at this board's hearing that he

is the sole owner of the property owner LLCs. R.C. 5715.19(A)(1) provides that a complaint against value may be filed by the following:

> Any person owning taxable real property in the county ***; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; ***.

It is unclear from the record what, if any, of the stated relationships Zachary Zaremba has to the property owners. In the absence of any such information, it appears his filings of the complaints constituted the unauthorized practice of law and, as such, failed to properly vest jurisdiction in the BOR. *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244; *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997). However, because the BOR proceeded to issue merit decisions for each complaint finding no change to the initial auditor's value was warranted, we proceed to review the evidence presented in support of the requested decreases in value.

[5] For each property, appellant relies on a prior arm's-length sale. The sales occurred nine years prior (68 Cromwell), eight years prior (279 Hunter), and five years prior (4103 Crest) to tax lien date, i.e., January 1, 2017. Notably, Montgomery County conducted its sexennial reappraisal of properties in the county in 2014 – *after* all of the sales. In *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, the Ohio Supreme Court held that a presumption of recency does *not* apply where "a sale occurred more than 24 months before the lien date and *** is reflected on the property record card maintained by the county auditor *** when a different value has been determined for that lien date as part of the six-year reappraisal." Id. at ¶26. See also *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. Accordingly, none of the sales upon which appellants rely

is presumed recent to tax lien date.

[6] The *Akron* court explained that the proponent of a sale that is not presumed recent must come forward with evidence demonstrating that neither market conditions nor the character of the property have changed between the date of sale and tax lien date. For the property at 279 Hunter, it appears the character of the property itself changed after its sale in July 2009, as Gary Zaremba testified at this board's hearing that substantial improvements were made, including plumbing and electrical work. We therefore find the sale of 279 Hunter, prior to such improvements, no longer reflects the value of the property for tax year 2017.

[7] Further, comparable sales information was presented to the BOR and to this board; however, we do not find such evidence reliable or probative. For example, we question the comparables presented in support of the decrease in value for 4103 Crest. Hearing Record, Exhibit A. The first, a sale of 469 Allwen Drive, was listed and sold on the same date in 2018 for $4,401 (compared to the auditor's value of 4103 Crest at $44,070). The second comparable sale appears to be a second sale of the same property (469 Allwen Drive) for $10,750 four months later. There is no explanation for the stark difference in sale prices in such a short time period, raising doubt about the reliability of one or both sales. We further note 469 Allwen appears to differ from the subject property, as it has a three-car attached garage, while 4103 Crest has none. It is also unclear how many units the comparable property has, as it is simply listed as "2-4 units." As to the circumstances of the sales themselves, neither Zachary nor Gary Zaremba provided any testimony about the nature of the sales and the limited information provided does not allow us to determine whether the sales were arm's-length sales for purposes of determining the subject properties' fair market values. See R.C. 5713.04 (forced and auction sales are not indicative of fair market value); *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989) (defining the characteristics of an arm's-length sale). In sum, we do not find the comparable sales evidence carries appellants' burden to demonstrate no change in the market since the sales of the subject

properties in 2008, 2009, and 2012.

[8] Based upon the foregoing, we find appellants have failed to meet their burdens to prove their rights to the decreases in value requested. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096. It is therefore the order of this board that the true and taxable values of the properties as of January 1, 2017, were as previously determined by the auditor and retained by the board of revision, as follows:

PARCEL NUMBER R72 160104 0002

TRUE VALUE: $44,070

TAXABLE VALUE: $15,420

PARCEL NUMBER E20 24108 0004

TRUE VALUE: $60,500

TAXABLE VALUE:

$21,180PARCEL NUMBER R72

05802 0045 TRUE VALUE:

$41,080

TAXABLE VALUE: $14,380

341 CASTLEWOOD LLC, (et. al.),	)	CASE NO(S). 2018-987, 2018-1339, 2018-1341, 2018-1343, 2018-1344, 2018-1345, 2018-1351, 2018-1352, 2018-1353, 2018-1355, 2018-1356, 2018-1357, 2018-1359, 2018-1362, 2018-1445, 2018-1446, 2018-989, 2018-990
Appellant(s),	)	
vs.	)	
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
Appellee(s).	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 341 CASTLEWOOD LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

BOARD OF EDUCATION OF THE DAYTON CITY SCHOOL DISTRICT
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

Entered Friday, October 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellants, affiliated limited liability companies, challenge several individual decisions of the Montgomery County Board of Revision ("BOR") determining the subject properties' true values for tax year 2017. We consider these appeals upon the notices of appeal, the transcripts certified by the BOR, our hearing record ("H.R."), and appellants' exhibits. No appellee

attended our hearing or filed argument in support of the BOR decisions. Several of the subjects were appealed multiple times. We have consolidated those cases.

[2] The subjects are single and multi-family rental homes operated by the same management company, Pepzee Realty LLC ("Pepzee"). Pepzee filed the notices of appeal; its employees testified at this board's hearing and at the various BOR hearings. In support, Pepzee has submitted, for each subject, evidence of a sale and unadjusted market data. H.R. at 1-3. No party offered any appraisals.

[3] While we evaluate each property individually below, we first survey the law governing our review. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant "must furnish 'competent and probative evidence' of the proposed value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[4] We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC*

v. Cuyahoga Cty. Bd. of Revision (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 ("the BTA correctly ruled out using the BOR's reduced value, because it could not replicate it").

[5] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision* , 47 Ohio St.3d 23, 25 (1989). While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A proponent can rehabilitate a remote sale, however, with evidence that the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. A sale that postdates tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19.

[6] The Ohio Supreme Court has explained that a taxpayer seeking to reduce the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm's-length character of the sale.'" Id. at ¶ 14

(quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the

proponent presents a facially valid sale, the burden shift to the opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction or not recent to tax lien date. Id.

[7] In the absence of a qualifying sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964); see also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133Ohio St.3d 111, 2012-Ohio-3930, ¶ 28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). While it is true "anyone can have an opinion of value, appraisers are professionals with training and expertise in the accepted valuation methods and techniques who have an ethical obligation to remain disinterested and unbiased while performing an appraisal." The Appraisal of Real Estate (14th Ed.2013) 2. An appraiser does more than compile data. An appraiser adjusts for the differences between the comparables and the subject. An appraiser may also use other recognized methods of valuation such as the cost and income capitalization approach. See *Gallick*, supra.

[8] Raw sales data alone is not generally a substitute for a qualifying appraisal. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported.With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See generally The Appraisal of Real Estate (13th Ed.2008). While we address each subject property individually below, we note here that we cannot find appellants' unadjusted sales data competent evidence of value for any of the properties. First, the data is not a substitute for an appraisal. Second, each comparable varies from the respective subject property; they vary from the properties in size, number of bedrooms, number of bathrooms, age, condition, and location. An expert's

appraisal is needed to control for those variables and then apply the distilled data to the subject property. Appellants are presumably aware of this rule since this board has rejected similar evidence in prior cases brought by Pepzee. See, e.g., *466 Grand LLC v. Montgomery Cty. Bd. of Revision* (Nov. 5, 2015), BTA No. 2014-4870, unreported.

[9] We also see the data appears to have been compiled by a broker. A broker is not an appraiser. See *Springfield Local Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported. As we have noted before, "real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience." Id. (quoting The Appraisal of Real Estate (13th Ed.2008)). We have also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Equally problematic, no party with personal knowledge of the listed sales appeared before the BOR or this board. That means the reports are unreliable hearsay, and the testimony of Pepzee's representative does not cure that defect because he had no actual knowledge of the various transactions contained in the reports. The Ohio Supreme Court has been clear that "the owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19.

[10] Pepzee's manager testified about several of the subjects at the various BOR hearings. He provided his own opinion of value for several subject properties. While an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported.

[11] Finally, we acknowledge several of our determined values below are higher than the

BOR's value. Again, we "eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki*, supra. We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina*, supra. Notably, the BOR modified the auditor's valuation in several cases using what the BOR characterized as an "income approach." It is unclear, however, what formula the BOR used or where the BOR obtained the necessary data. It appears the BOR used a gross income multiplier using rents as reported by Pepzee's representative at the BOR hearing. While gross rents would be probative to an income approach appraisal, additional information would be necessary and a formal appraisal developed. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 1997-A-175, unreported. This board has rejected the untailored gross rent multiplier method of valuation and has been affirmed in doing so. See *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845. Gross rent multipliers are only reliable in specific circumstances and generally require application by an appraiser. Id. at ¶ 17. In *Edgewood Manor of Westerville, Inc. v. Franklin Cty. Bd. of Revision* (Sept. 8, 2006), BTA No. 2004-T-706, unreported, we held:

> "Appraisers who attempt to derive and apply gross income multipliers for valuation purposes must be careful for several reasons. First, the properties analyzed must be comparable to the subject property and one another regarding physical, locational, and investment characteristics. Properties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes. The Appraisal of Real Estate, at 546. The Appraisal of Real Estate further cautions that income multipliers should not be used to determine value under the market data approach because comparable prices are not adjusted on the basis of differences in net operating income per unit because rents and sale prices tend to move in relative tandem."

We see no evidence in the record that the BOR controlled for all those variables nor are we able to determine where the BOR obtained the data to create its gross income multiplier. Accordingly, in the cases below where we cannot replicate the calculation, we reinstate the auditor's value. See *Sapina*, supra.

[12] Having surveyed the law generally applicable to the subject properties, we address each in turn.

218 CASTLEWOOD LLC

[13] The county auditor valued this property at $27,240 for tax year 2017, and appellant filed a decrease complaint requesting a value of $7,900 citing an August 2012 sale. Appellant supplied the settlement statement showing the 2012 sale from HUD for a contract price of $7,900. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We also note the sale is a HUD sale, which is presumed invalid. See *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 149 Ohio St.3d 496, 2015-Ohio-8075. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported. Accordingly, we find appellant has failed to carry its burden.

[14] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER E20 17007 0100

TRUE VALUE

$27,240

TAXABLE VALUE

$9,530

620 HALL LLC

[15] The county auditor valued this property at $30,420 for tax year 2017, and appellant filed a decrease complaint requesting a value of $25,000 citing a 2012 sale. Appellant supplied the

settlement statement showing a contract price of $25,000. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp* supra. Accordingly, we find appellant has failed to carry its burden.

[16] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 05703 0070

TRUE VALUE

$30,420

TAXABLE VALUE

$10,650

341 CASTLEWOOD LLC

[17] The county auditor valued this property at $30,570 for tax year 2017, and appellant filed a decrease complaint requesting a value of $6,000 citing a 2015 sale. Appellant supplied the settlement statement showing the subject was purchased from Visio Financial Services Inc., for $6,000. The parcel card corroborates the sale price. Accordingly, appellant met its initial "relatively light burden" with the purchase documents, which shifts the burden of rebuttal to the BOR. See *Lunn*, supra,at ¶ 14.

[18] The BOR rejected the sale because the settlement statement did not show a broker's commission was paid. The BOR inferred from that fact that the sale was not an arm's-length. A broker's commission is not an essential element of an arm's-length transaction. See *Gem City*

unreported. The Ohio Supreme Court has likewise held its "case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶20. Accordingly, we find the BOR did not rebut the presumption created by the sale.

[19] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER E20 17007 0049

TRUE VALUE

$6,000

TAXABLE VALUE

$2,100

59 BENNINGTON LLC

[20] The county auditor valued this property at $46,850 for tax year 2017, and appellant filed a decrease complaint requesting a value of $4,000 citing a 2016 land bank sale. Appellant supplied the deed and a letter from the land bank. However, none of those documents list the sale price. The parcel card likewise lacks a sale price, and the sale price cannot be extrapolated from the conveyance fee because that amount is listed as $0. At the BOR hearing, Pepzee's manager relied solely on the documents. The documents submitted at this board's hearing likewise lack the sale price. The representative at this board's hearing did not testify to personal knowledge of the transaction. Accordingly, we find appellant failed to present a facially qualifying sale. See *Lunn*, supra, at ¶ 14.

[21] We order the property to be assessed in accordance with the following values for

tax year 2017:

PARCEL NUMBER E20 18007 0007

TRUE VALUE

$46,850

TAXABLE VALUE

$16,400

132 CENTRAL LLC

[22] The county auditor valued this property at $33,490 for tax year 2017, and appellant filed a decrease complaint requesting a value of $21,900 citing a 2014 sale. Appellant supplied the settlement statement showing a contract price of $21,900. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp* , supra. Accordingly, we find appellant has failed to carry its burden.

[23] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 06504 0048

TRUE VALUE

$33,490

TAXABLE VALUE

$11,720

82 CROMWELL LLC

[24] The county auditor valued this property at $55,400 for tax year 2017, and appellant filed a decrease complaint requesting a value of $50,000 citing a 2008 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[25] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER E20 24108 0005

TRUE VALUE

$55,400

TAXABLE VALUE

$19,390

302 FOUNTAIN LLC

[26] The county auditor valued this property at $44,800 for tax year 2017, and appellant filed a decrease complaint requesting a value of $39,000 citing a 2008 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find

appellant has failed to carry its burden.

[27] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 07011 0024

TRUE VALUE

$44,800

TAXABLE VALUE

$15,680

325 FOUNTAIN LLC

[28] The county auditor valued this property at $43,970 for tax year 2017, and appellant filed a decrease complaint requesting a value of $12,600 citing a 2008 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[28] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 07010 0058

TRUE VALUE

$43,970

TAXABLE VALUE

$15,390

3930 LORI SUE LLC

[29] The county auditor valued this property at $46,070 for tax year 2017, and appellant filed a decrease complaint requesting a value of $6,800 citing a 2009 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[30] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 12313 0003

TRUE VALUE

$46,070

TAXABLE VALUE

$16,120

2017 MALVERN LLC

[31] The county auditor valued this property at $22,000 for tax year 2017, and appellant filed a decrease complaint requesting a value of $17,000 citing a 2012 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data

because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[32] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 11508 0048

TRUE VALUE

$22,000

TAXABLE VALUE

$7,700

179 OAKLAWN LLC

[33] The county auditor valued this property at $51,800 for tax year 2017, and appellant filed a decrease complaint requesting a value of $5,101 citing a 2016 land bank sale. However, none of the sale documents presented list the sale price. The parcel card likewise lacks a sale price, and the sale price cannot be extrapolated from the conveyance fee because that amount is listed as $0. At the BOR hearing, Pepzee's manager relied solely on the documents. The documents submitted at this board's hearing likewise lack the sale price. The representative at this board's hearing did not testify to personal knowledge of the transaction. Accordingly, we find appellant failed to present a facially qualifying sale. See *Lunn*, supra, at ¶ 14.

[34] The BOR did grant a partial reduction to $33,880 using a gross income multiplier. We must reject that value because it is not supported by evidence in the record. See *Sapina*, supra. To develop a reliable income capitalization approach, at a minimum, an "analysis of cost and sales data" is needed to complete the calculation. The Appraisal of Real Estate (14th Ed.2013)). The record is devoid of any such analysis or data. Accordingly, we see no reason to deviate from the auditor's value. See *Jakobovitch*, supra.

[35] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 04107 0008

TRUE VALUE

$51,800

TAXABLE VALUE

$18,130

PEPZEE REALTY INC.

[36] The county auditor valued this property at $20,470 for tax year 2017, and appellant filed a decrease complaint requesting a value of $9,250 citing a 2016 sale. Appellant supplied the settlement statement in support. Accordingly, appellant met its initial "relatively light burden" with the purchase documents, which shifts the burden of rebuttal to the BOR. See *Lunn*, supra, at ¶ 14.

[37] The BOR did not rebut the sale. Instead, it rejected the sale because the BOR's gross income multiplier calculation showed the subject should be valued higher than the auditor's value. The BOR did not contest the recency or arm's-length nature of the 2016 sale. Because the sale is the best evidence of value and the BOR failed to rebut the sale, we value the subject according to the sale price.

[38] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 04411 0011

TRUE VALUE

$9,250

TAXABLE VALUE

$3,240

644 REDWOOD LLC

[39] The county auditor valued this property at $27,590 for tax year 2017, and appellant filed a decrease complaint requesting a value of $15,000 citing a 2009 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[40] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 10902 0031

TRUE VALUE

$27,590

TAXABLE VALUE

$9,660

203 RYBURN LLC

[41] The county auditor valued this property at $14,000 for tax year 2017, and appellant filed a decrease complaint requesting a value of $9,500 citing a 2013 sale. Appellant supplied the

settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[42] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 10908 0045

TRUE VALUE

$14,000

TAXABLE VALUE

$4,900

138 SANTA CLARA LLC

[43] The county auditor valued this property at $80,000 for tax year 2017, and appellant filed a decrease complaint requesting a value of $65,350 citing a 2013 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[44] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 07005 0006

TRUE VALUE

$80,000

TAXABLE VALUE

$28,000

15 WOODCREST LLC

[45] The county auditor valued this property at $46,320 for tax year 2017, and appellant filed a decrease complaint requesting a value of $40,000 citing a 2012 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[46] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 07104A0050

TRUE VALUE

$46,320

TAXABLE VALUE

$16,210

[47] The county auditor valued this property at $57,290 for tax year 2017, and appellant filed a decrease complaint requesting a value of $11,700 citing a 2010 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[48] The BOR did grant a partial reduction to $48,110 using a gross income multiplier. We must reject that value because it is not supported by evidence in the record. See *Sapina*, supra. We "eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki*, supra. To develop a reliable income capitalization approach, at a minimum, an "analysis of cost and sales data" is needed to complete the calculation. The Appraisal of Real Estate (14th Ed.2013)). The record is void of any such analysis or data. Accordingly, we see no reason to deviate from the auditor's value. See *Jakobovitch*, supra.

[49] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 11807 0050

TRUE VALUE

$57,290

TAXABLE VALUE

$20,050

[50] The county auditor valued this property at $74,270 for tax year 2017, and appellant filed a decrease complaint requesting a value of $23,771 citing a 2012 sale. Appellant supplied the settlement statement in support. The BOR rejected the sale finding it too remote; we agree the sale is too remote to be competent evidence of value. See *Akron City Schools*, supra, at ¶¶ 12-17. Appellant did not submit evidence the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick*, supra. We likewise reject appellant's unadjusted sales data because the data is not competent evidence of value. See *Copp*, supra. Accordingly, we find appellant has failed to carry its burden.

[51] The BOR did grant a partial reduction to $46,050 using a gross income multiplier. We must reject that value because it is not supported by evidence in the record. See *Sapina*, supra. We "eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki*, supra. To develop a reliable income capitalization approach, at a minimum, an "analysis of cost and sales data" is needed to complete the calculation. The Appraisal of Real Estate (14th Ed.2013)). The record is void of any such analysis or data. Accordingly, we see no reason to deviate from the auditor's value. See *Jakobovitch*, supra.

[52] We order the property to be assessed in accordance with the following values for tax year 2017:

PARCEL NUMBER R72 11606 0024

TRUE VALUE

$74,270

TAXABLE VALUE

OHIO BOARD OF TAX APPEALS

THE RATTERMAN FAMILY LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1292 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE RATTERMAN FAMILY LIMITED PARTNERSHIP
Represented by:
ANDREW STALLO
RATTERMAN FAMILY LIMITED PARTNERSHIP
6801 HARRISON AVENUE
CINCINNATI, OH 45247

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, October 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BORMARI, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1016
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BORMARI, LLC
Represented by:
BORIS GRINBERG
1284 SOM CENTER RD. #120
MAYFIELD HTS., OH 44040

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, October 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss for failing to file notice of the appeal with the Cuyahoga County Board of Revision ("BOR"). We decide the matter upon the motion, appellant's response, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

Appellant filed an appeal with this board on July 16, 2019. In their motion, the county appellees assert that notice of the appeal was not filed with the BOR. Under R.C. 5717.01, "[a]n appeal from a decision of a county board of revision may be taken to the board of appeals within thirty days after notice of the decision of the county board of revision is mailed ***." It further provides that "[s]uch appeal shall be taken by filing of a notice of appeal *** with the

board of tax appeals *and with the county board of revision*." This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000).

The statutory transcript indicates that the BOR did not receive notice of the appeal from appellant. In its response to the motion to dismiss, appellant (through its owner Boris Grinberg) argued that it had, in fact, sent notice of the appeal to the BOR and provided a tracking number as evidence. (Although appellant indicated the notice was sent from a UPS store, the tracking number appears to relate to a USPS mailing.) Data from the USPS website indicates a mailing was sent to a Cleveland, Ohio address and was delivered on July 17, 2019; however, it does not indicate to what specific address the mailing was sent. Such information is relevant here, as the Supreme Court has held that notice to other county officials, e.g., the county prosecutor, is insufficient to meet the requirement of R.C. 5717.01. *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621, 623 (1998).

Based upon our review of the record, we find appellant has not met its burden to prove that it properly invoked this board's jurisdiction in accordance with the requirements of R.C. 5717.01. Accordingly, the county appellees' motion is well taken and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

TESSMER GROUP, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1007
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - TESSMER GROUP
Represented by:
JON TESSMER
8548 MARKET AVENUE N
NORTH CANTON, OH 44721

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

LAKE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Tuesday, October 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. The board of education responded in support of the county appellees' motion. Appellant's only response was to request a hearing. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the responses, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county

board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR, nor has appellant indicated that any evidence of such filing exists. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HCP EMOH LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2015-700
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
WASHINGTON COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - HCP EMOH LLC
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - WASHINGTON COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, October 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is once again before the Board of Tax Appeals upon remand from the Supreme Court, which issued a decision and judgment entry in *HCP EMOH, L.L.C. v. Washington Cty. Bd. of Revision*, 155 Ohio St.3d 378, 2018-Ohio-4750, vacating this board's decision and order, dated October 26, 2016. The court held that this board erred in adopting the county appellees' appraisal, vacated this board's decision, and remanded the case for further proceedings. Id. at ¶2.

The subject property consists of two parcels (numbers 23-0085642.001 and 23-0073276.001) constituting 6.87 acres of land improved with a single-story assisted-living facility, which includes 16 memory care units. "The facility has 89 units that range from 286 to

363 square feet, each of which comes furnished with a kitchenette, a shower, and toilet facilities. Common areas make up roughly half of the facility's space and include lounges, multipurpose rooms, dining rooms, a beauty/barber shop, and a commercial kitchen. The facility provides numerous services, including meals, medical assistance, and recreational activities." Id. at ¶3.

The auditor initially assessed the total true value of the two parcels at $6,042,620 for tax year 2014, and appellant HCP EMOH LLC ("HCP") filed a complaint seeking a reduction in value to $3,600,000. The board of revision ("BOR") convened a hearing, at which HCP amended its requested value to $2,850,000, relying on "a memorandum and supporting documents that set forth an analysis using the sales-comparison and income approaches to value based on apartment data." Id. at ¶4. The BOR issued a decision retaining the auditor's value, which HCP appealed to this board.

At this board's hearing, HCP presented the testimony and written report of appraiser Richard G. Racek, MAI, who first determined that the highest and best use for the subject property was continued use in a multifamily capacity. Racek utilized traditional apartment complexes as the relevant market data for both his sales comparison and income approaches to value, which he reconciled at a value of $3,550,000. The county appellees relied on an appraisal report and testimony from Zach Bowyer, MAI, who opined that the subject's value was $9,100,000 as of January 1, 2014. Bowyer concluded that the highest and best use of the subject was as an assisted living facility with memory care services and gave primary weight to the income approach to value, performing the sales comparison approach only as a test of reasonableness. For his income analysis, Bowyer utilized income and expense information for the operation of the assisted living facility (including services) and used a "lease coverage

analysis" derived from a lease coverage ratio to separate the value of the real property from the business.

This board issued a decision adopting Bowyer's opinion of value and rejecting Racek's appraisal, in which we commented that although the court had previously held that traditional apartments could be used to value an assisted living facility, appraisers were not required to adhere to this methodology. This board found that Bowyer had adequately extracted the value of the assisted living business and that Racek undervalued the property by not adequately adjusting the sale and lease comparables to account for differences between assisted living facilities and traditional apartments. After an appeal from HCP, the court reviewed this board's decision and affirmed our rejection of Racek's appraisal, agreeing that its prior case law " *permits* but does not *require* reliance on apartment comparables." Id. at ¶22. While not addressing the propriety of a lease coverage analysis as a methodology in general, the court determined that Bowyer's analysis was flawed because his lease coverage ratio was based on leases that reflected business value and not the value of the realty. Id. at ¶19-20. The court concluded that "the BTA erred in adopting Bowyer's appraisal but stayed within the bounds of its discretion in rejecting Racek's appraisal. Therefore, we vacate the BTA's decision and remand the case for further proceedings." Id. at ¶25.

On remand, this board must first determine whether there is sufficient evidence to enable an independent valuation. "If there is, the BTA must determine an independent value. If not, it may reinstate the value initially determined by the auditor." Id. at ¶25, citing *Apple Group Ltd. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 434, 2014-Ohio-2381 ¶16; *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶ 11-15 (collecting cases).

Upon review of the record before us, we find that record contains insufficient data upon which this board can rely to independently determine value. Looking first to Racek's report, we reiterate the criticism made during our initial review of the evidence (which was affirmed by the court) that his sale and rental comparables were too dissimilar from the subject and insufficient adjustments were made to account for these dissimilarities. Just as the court was unable to further analyze Bowyer's approach due to his "flawed inputs," *HCP EMOH*, supra at ¶20, we lack the data to make the necessary adjustments to the comparables in Racek's report.

Similarly, we find that Bowyer's sales comparison analysis cannot be utilized to independently value the subject property. The court did not address Bowyer's sales comparison approach, which was utilized only as a test of reasonableness and was not given primary weight in his value reconciliation. Upon review of the data within this approach, however, we find that like his income approach, Bowyer failed to provide enough support for the methodology used to extract the business value from the sales of the going concerns. Thus, we lack the necessary information to establish the proper allocation of the purchase price to the real property for each of Bowyer's comparable sales.

In short, Racek's appraisal utilized dissimilar properties (traditional apartment communities) without sufficient adjustments to relate the data to the features of the subject assisted living facility. Bowyer's appraisal utilized similar properties but did not sufficiently remove the effect of the business value on his comparable sales data. Thus, we are unable to utilize the data within these reports to independently value the subject. Furthermore, there is no other evidence in the record we find is sufficiently reliable to use to value the property. Accordingly, consistent with the court's decision, we reinstate the value initially determined by the auditor.

It is therefore the order of this board that the true and taxable values of the subject

property, as of January 1, 2014, were as follows:

PARCEL NUMBER 23-0085642.001

TRUE VALUE

$5,988,280

TAXABLE VALUE

$2,095,900

PARCEL NUMBER 23-0073276.001

TRUE VALUE

$54,340

TAXABLE VALUE

$19,020

OHIO BOARD OF TAX APPEALS

DAVID HILS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1158
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DAVID HILS
2436 SAYBROOK ROAD
UNIVERSITY HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, October 24, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellant's notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. *In Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is -1- essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and

mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

A review of the statutory transcript certified to this board indicates that appellant did not file a copy of the notice of appeal with the BOR. Appellant contends in response, that he sent a copy of his notice of appeal to the county's assistant prosecutor. Initially, we note that "although a county prosecutor acts as counsel for the BOR, the prosecuting attorney is not authorized to accept a notice of appeal in lieu of filing such notice with the BOR." *Kinat v. Lake Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2010-Y-1213, unreported, citing *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621 (1998). Moreover, appellant did not provide any proof that the notice of appeal was received by the BOR. As the Supreme Court noted in *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, ¶10, quoting *United States v. Lombardo*, 241 U.S. 73, 76 (1916), "[a] paper is filed when it is delivered to the proper official and by him received and filed." See, also, *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶21. Thus, we find appellant's arguments unavailing and find that he failed to comply with the statutory requirement to file notice of the appeal with the BOR within thirty days of the mailing of the BOR's decision.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter.

Accordingly, the county appellees' motion is well taken. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

OWNER OF SHARBILD INC, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1304 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OWNER OF SHARBILD INC
Represented by:
PHILLIP GABRIEL
OWNER
SHARBILD INC.
38005 APOLLO PKWY #6
WILLOUGHBY, OH 44094

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

WILLOUGHBY-EASTLAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ELIZABETH GROOMS-TAYLOR
HOOVER KACYON, LLC
527 PORTAGE TRAIL
CUYAHOGA FALLS, OH 44221

Entered Friday, October 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GREGORY C HOCEVAR (SPOUSE), (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1330 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GREGORY C HOCEVAR (SPOUSE)
Represented by:
GREGORY C. HOCEVAR
38451 N BEACHVIEW ROAD
WILLOUGHBY, OH 44094

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

WILLOUGHBY-EASTLAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
WILLOUGHBY-EASTLAKE CITY SCHOOLS BOARD OF EDUCATION
37047 RIDGE RD
WILLOUGHBY, OH 44094

Entered Friday, October 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a

county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VIG AND KHANUJA FAMILY TRUST, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1134 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VIG AND KHANUJA FAMILY TRUST
Represented by:
VINSON VIG
2912 ROCKY RIDGE DRIVE
WESTLAKE, OH 44145

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

WESTLAKE CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, October 25, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellants' notice of appeal, the statutory transcript certified by the county board of revision ("BOR"), and appellants' response to the motion. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Appellants' response indicates uncertainty if they served the BOR; appellants were unable to provide documentation of such service. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2018-1604 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

APC PROPERTIES LLC
Represented by:
STEVEN L. SMISECK
VORYS, SATER, SEYMOUR AND PEASE LLP
52 EAST GAY STREET, P.O. BOX 1008
COLUMBUS, OH 43216-1008

Entered Monday, October 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 010-143126-00, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board. We note that there was some discussion regarding an appraisal said to have been

provided to the BOR for an earlier tax lien date, but no such appraisal is included in the record. Upon further review, it appears that no appraisal was submitted to the BOR for this case but was offered for other cases heard by the BOR during a combined hearing. Thus, although the record does not contain such an exhibit, it does not appear that one was presented.

[2] The subject property consists of 0.6681 acres of land improved with a 2,340-square-foot commercial building operating as a Pizza Hut. The auditor initially assessed the subject's total true value at $573,000. The appellee property owner, APC Properties LLC ("APC"), filed a complaint with the BOR seeking a reduction in value to $420,000. The BOE filed a countercomplaint in support of the auditor's values. At the BOR hearing, APC relied on testimony from John Mitchell, a consultant with experience as a former vice president of development for Taco Bell. In that role, Mitchell was responsible for making decisions around the acquisition, disposition, and remodeling of real estate. Mitchell provided an opinion of value for the subject property based on the sales of five other properties, noting that he did not challenge the auditor's land value of $320,000 but believed the value of the improvements should be reduced from $279,900 to $100,000 because freestanding Pizza Hut buildings are difficult and expensive to convert and are often demolished. Mitchell acknowledged that three of the sales took place in 2012 and that he did not make any adjustments to the sales. Mitchell also testified regarding his understanding of the future of freestanding Pizza Hut locations, indicating that they were being largely phased out. The BOE objected to Mitchell's testimony and any documents he prepared because he is not an appraiser, an owner, or a salaried employee of the owner. The BOE also objected to specific aspects of his testimony based on the probative nature of that evidence. The BOR issued a decision reducing the initially assessed valuation to $420,000, noting the BOE's objections but accepting Mitchell's opinion of value. From this decision, the BOE filed the present appeal.

[3] This board convened a hearing, at which the BOE presented evidence of a November 5, 2018 sale of the subject property for $1,421,646, arguing that the sale price provides the best evidence of the value of the subject property. The BOE also argued that the BOR's decision was not legally correct because it relied on Mitchell's opinion of value. APC first objected to the documents offered by the BOE because they were not certified copies and challenged whether they were true and accurate copies, though it acknowledged that ownership changed to ARG PHCMBOH002, LLC ("ARG") in November 2018 and that counsel represented both entities. APC indicated that it had intended to present witness testimony regarding the circumstances of the sale, but the witness was unable to attend the hearing and APC did not move to continue the matter to an alternative date for the witness to attend. Instead, counsel made numerous statements purporting to be "proffered testimony" that the sale involved a going concern and was allocated from a larger transaction, though no additional evidence was provided in an attempt to corroborate these statements. Instead, APC cited to *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, in which the court held that when a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes. APC argued that although the property was not the subject of two sales, the auditor had performed the sexennial reappraisal to determine the value for tax year 2017, and that the reappraisal occurred closer in time to January 1, 2017 than the sale that took place 23 months after the tax lien date. The BOE maintained that the auditor could not have considered the sale in the 2017 reappraisal because it had not yet taken place.

[4] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction."

Conalco v. Bd. of Revision, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[5] In the present appeal, it is undisputed that the subject property transferred from APC to ARG on November 5, 2018, though APC challenged the authenticity of the documents offered by the BOE to establish the details of the sale. Although APC correctly noted that they are not certified copies, we find that they are nevertheless reliable evidence. As an administrative agency this board is not strictly bound by the rules of evidence and has discretion about the admission of evidence and weight given thereto. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, citing *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 415, 416 (1996) ("The BTA has discretion in admitting evidence"). In this case, we find it relevant that APC has not disputed that the sale actually took place, indicated that the owner may file an amended conveyance fee statement (suggesting that the conveyance fee statement presented was an accurate copy of the one filed), and has offered no evidence to demonstrate that the details are not correct, though such information would be in its possession. Thus, we will consider the documents presented by the BOE and give them their appropriate evidentiary weight as prima facie evidence of a sale.

[6] Additionally, we reject APC's argument that the BOE essentially must prove the recency of the sale. In the case cited by APC, the court discussed the situation in which a property was subject to multiple arm's-length sales that would be considered "recent" to a tax lien date, holding that the sale closer in time should be used for purposes of tax valuation. *HIN*, supra. While we acknowledge that a sale becomes less reliable the further removed it is from the tax lien date, APC's argument would require any proponent of a sale to prove recency any time there is an intervening revaluation. The court, however, has rejected this argument. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. See also *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. In *Lone Star*, the court reiterated that a sale is not presumed to be recent when a sale occurred more than 24 months *before* the tax lien date and the auditor (or fiscal officer) determined a different value during the sexennial reappraisal. It clarified, however, that this rule does not apply to sales *after* tax lien date because "when a sale postdates the tax-lien date of a reappraisal year, the 24-month rule may not apply because that sale could not have been accounted for by the reappraisal." Id. at ¶18, quoting *Akron*, supra, at ¶43 (Kennedy, J., concurring). Rather, the court expressly held that this board erred in finding that the sale of a property was too remote from tax-lien date and in requiring property owner to present evidence showing that either market conditions or character of property had remained the same between sale date and tax-lien date because "a facially qualifying sale *** still enjoys a presumption of recency even when it postdates tax-lien date by more than 24 months." Id. at ¶19. As such, in this case, APC was required, but failed, to provide evidence to rebut the presumed recency of the November 2018 sale.

[7] Likewise, we find that APC has failed to show that the recorded purchase price as reflected on the conveyance fee statements and the auditor's records, was not attributable to the

subject real property. The statements of counsel, without any competent and probative evidence or corroboration are not sufficient to call the reliability of the sale into question. *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299, (1998). See, also, *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, ¶14 (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel). As such, we accord no weight to counsel's proffer of testimony that would have purportedly been given by a witness who failed to appear at the hearing and note that APC made no attempt to seek a continuance in order to secure the witness's testimony. We find that the purchase price listed on the conveyance fee statement was consideration for the subject real property. Neither APC nor ARG have provided any competent evidence that non-realty items were included in the recorded purchase price. Accordingly, we find that APC has failed to show that the $1,421,646 sale was not a qualifying transaction for purposes of establishing the true value of the subject property.

[8] Having found that a recent, arm's-length sale took place, we nevertheless must weigh the remaining evidence in the record to determine whether it provides a more reliable indication of value. *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855, ¶14. APC relies on Mitchell's valuation analysis as independent evidence to establish a value other than the sale price. In this case, however, we find that it is less reliable than the 2018 sale of the subject property and does not rebut the utility of the sale. Despite APC's attempt to qualify Mitchell as an expert witness by way of his experience in valuation or as a representative of the owner, we find that neither applies to Mitchell. We have no reason to doubt Mitchell's experience and qualifications to make business decisions regarding acquisition, retention, or disposition of real property used for that business. This alone, however, does not

grant him the requisite expertise to value real property for purposes of taxation. As we have noted before, a variety of professionals involved in the buying and selling of real estate have training in their field but may or may not have extensive appraisal experience. See, e.g., *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported (quoting The Appraisal of Real Estate (13th Ed.2008)). In such cases, we have also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Similarly, we find that Mitchell has not shown the requisite qualifications to consider him an expert in the valuation of real estate for tax purposes.

[9] Additionally, although Mitchell has had experience working for an entity related to Pizza Hut, we find that he does not qualify as an "owner" entitled to provide an opinion of the subject's value. See *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). Even if he were, however, in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). An owner's opinion must still be probative as to the value of the property on lien date. See *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision*, 5th Dist. Stark No. 2014CA00162, 2015-Ohio-2290.

[10] Mitchell relied solely on the "market" approach to conclude that the subject's value was $420,000 based on a reduction in the value of the building, asserting that conventional Pizza Hut buildings are designed for a specific user and are "virtually worthless" for any major

conversion. Mitchell discussed the sales of five properties, asserting that they supported his conclusion that the value was primarily attributed to the land. Mitchell noted several differences among the properties and three of the took place in 2012, though no adjustments were made for a change in market conditions between 2012 and 2017 or to account for the physical or location differences among the properties. Mitchell also provided some anecdotal information regarding purported examples of former Pizza Hut properties in Ohio, but he did not provide any supporting data or demonstrate how the circumstances of those properties compare to those experienced by the subject property. Thus, we find that Mitchell's opinion is not sufficient to demonstrate that the value of the property should be reduced to $420,000 or that the November 2018 sale of the property should be disregarded.

[11] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE
$1,421,650

TAXABLE VALUE

$497,580

OHIO BOARD OF TAX APPEALS

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1887 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

LEXINGTON FARMS NORTH LTD.
Represented by:
STEVEN R. HOBSON, II
ATTORNEY AT LAW
388 SOUTH MAIN STREET
SUITE 402
AKRON, OH 44311

Entered Monday, October 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Plain Local Schools Board of Education ("BOE") appeals from a decision of the Stark County Board of Revision ("BOR") valuing twelve related parcels for tax year 2016. Both the BOE and appellee Lexington Farms North Ltd. ("Lexington") appeared at this board's hearing. No party filed written argument. We now decide the case on the notice of appeal, the transcript certified by the auditor, and this board's hearing record ("H.R.").

[2] The parties submitted a substantial amount of documentary and testamentary evidence to the BOR. The twelve parcels in this case started as a single parcel. The auditor valued the parcel at approximately $309,300 for tax year 2016. On July 29, 2016, Lexington purchased the property for $2,830,500 with the intent to subdivide and develop the property. The property was subsequently split into thirteen parcels in December 2016, and one parcel was sold before the filing of the complaint. The school board filed a complaint on the twelve remaining parcels requesting a value of $2,829,500 (to account for the lost thirteenth parcel). The BOE's complaint asked the BOR to adopt the sale price as the best evidence of value. We note the parcels are not equally divided and one parcel contains over 46 acres while others appear to be under one acre. The BOE supplied the BOR with the conveyance fee statement, the purchase agreement, and the deed. Those documents show the original sale price was $2,830,500. The BOE also presented a mortgage agreement wherein Lexington grants a $2,830,500 mortgage in favor of the seller.

[3] In rebuttal, Lexington offered the testimony of its owner Patrick Long and appraiser Jeffrey Wissler. Mr. Long testified he approached the seller about the transaction and proposed the terms of the transaction, which included a ballooning payment structure. Payments of principal and interest are initially deferred and later payments balloon. Mr. Long did not testify Lexington sought out any third-party lenders to determine if the market offered better terms. The interest rate per the contract is 1.5% per annum, but the default rate is 15% per annum. Mr. Long testified he had extensive experience in the development field, having built over 5,000 houses over thirty years. As the auditor's representative at the BOR hearing and the BOE noted, a large portion of the property has already been, or will be, sold to a separate buyer who has contracted to pay $55,000 for each lot. The parties generally dispute how much of a profit the

parties may obtain and how much risk the parties have assumed. The BOE argued, and the auditor's representative below noted, the contract with the third developer would lead to a final sale price of $5,500,000. See also H.R. at 43; S.T., Loan Documents at 8 (referencing "Ryan Lot Purchase Agreement"). Lexington argued the BOE had oversimplified the transaction because the development process is multi-stage with costs associated at each stage. Mr. Long did report he expects each parcel to eventually sell for between $250,000-$400,000. Mr. Wissler also presented an appraisal, using the sales comparison approach, which opined a value of $1,225,000. The BOR ultimately adjusted the values based on the evidence presented by Mr. Long and Mr. Wissler.

[4] The BOE appealed to this board asking it to adopt the sale price. Lexington again presented the testimony of Mr. Long and Mr. Wissler. The school board relied on the sale documents contained in the transcript.

[5] The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). However, in this case, the BOR modified the auditor's initial values based on appraisal evidence, and because the BOE is the appellant, our review is governed by the so-called *Bedford* rule announced in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. Under the *Bedford* rule, when the BOR adopts a new value based on the owner's competent evidence, it has the effect of shifting the burden of going forward with evidence to the board of education on appeal to the BTA. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶ 16. When the *Bedford* rule applies, the school board must do more than rely on the auditor's valuation; the school board must "come forward with affirmative evidence of the subject

property's value." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 2018), BTA No. 2017-1707, unreported. The BOE in this case relies solely on the sale.

[6] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. The parties do not challenge the recency of the sale, and this board does not find evidence the properties, undeveloped land, substantially changed in character or the market substantially changed in character between the tax-lien date and the sale date. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473. Instead, Lexington argues against the utility of the sale because the transaction was seller-financed and because of the terms of the finance agreement. The parties do not allege, and we find no evidence to support the proposition that, the seller was under duress to sell or a relationship between buyer and seller preexisted the sale. See *15 E. 11th Avenue LLC v. Franklin Cty. Bd. of Revision* (Oct. 27, 2006), BTA No. 2005-Z-497, unreported (discussing seller's duress and preexisting relationship principles).

[7] The Ohio Supreme Court has explained that a party seeking to alter the value of a property based on a sale can satisfy their initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Once the proponent presents a facially valid sale, the burden shifts to the opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id. Here, the BOE presented a facially valid sale, which shifted the burden to any opposing party.

[8] The presence of seller financing alone does not negate the arm's-length nature of a sale. *Middletown City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Aug. 4, 2017), BTA No. 2016-1122, unreported; *Maple Heights City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of*

Revision (Jan. 15, 2013), BTA No. 2009-Q-1572, unreported; *Anglin v. Franklin Cty. Bd. of Revision* (May 19, 2009), BTA No. 2007-A-848, unreported. Even "favorable financing does not render the sales priced unrepresentative of value." *Columbus Bd. of Edn. v. Fountain Square Assocs.*, 9 Ohio St.3d 218, 2019 (1984); *Perkins v. Cuyahoga Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2017-2267, unreported. This board has looked in the past to whether the sale opponent proved the financing agreement was out of step with market rates and terms. See, e.g., *Anglin*, supra. We are also required to look at whether the parties acted in their own self-interest and whether the arrangement led to an atypical reciprocal interaction. See *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989); *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578.

[9] Here, we find Lexington has not carried its burden of showing the presence of seller financing or the financing terms negates the utility of the sale. No party has provided this board with evidence to show the terms were out of step with market. See *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Jan. 30, 1998), BTA No. 1996-A-986, unreported. Importantly, Lexington bore that burden. Lexington provided no credible information about the lending market to contrast this transaction. It provided no evidence to show the interest rates were not market rate. It provided no evidence to show the terms were objectively unreasonable given the market. No party appears to have approached any third party lender to see if more favorable terms were available, and Mr. Long testified he never even proposed a straight purchase with the seller. Also, we note the transaction was negotiated by sophisticated parties. Mr. Wissler, whose appraisal we discuss below, testified a willing buyer would pay "much, much" less for the property. However, the record before us demonstrates that a willing buyer, under no duress, paid $2,830,500 to a willing seller.

[10] It is also clear the terms were negotiated and both sides received benefits and both sides assumed risks. The seller forewent any income for the initial period and agreed to defer interest. Lexington was under no obligation to pay interest or principle for the first two years, and even then only in smaller amounts. In accordance with market principles, Lexington and the buyer negotiated an open market transaction and decided on a price a willing buyer (Lexington) would pay a willing seller. See *Orange City Schools Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 325, 2017-Ohio-8817, ¶ 14.

[11] Keeping in mind that a sale is the best evidence of value, this board does not find Mr. Wissler's appraisal is better, more persuasive evidence of value. Wissler's report contains limited data about the market, the comparables, or market financing. Relatedly, this board is unable to determine that the adjustments to Wissler's comparables were appropriate given the limited data in the report.

[12] It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2016, were as follows:

PARCEL NUMBER 10008486

TRUE VALUE

$2,727,960

TAXABLE VALUE

$954,790

PARCEL NUMBER 10008479

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 10008480

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 10008481

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 10008483

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 10008484

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 10008487

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 10008488

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 100008489

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 100008490

TRUE VALUE

$10,060

TAXABLE VALUE

$3,520

PARCEL NUMBER 100008491

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

PARCEL NUMBER 100008492

TRUE VALUE

$9,150

TAXABLE VALUE

$3,200

OHIO BOARD OF TAX APPEALS

HCP EMOH LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2017-1910
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
WASHINGTON COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - HCP EMOH LLC
Represented by:
KAREN H. BAUERNSCHMIDT
VORYS SATER SEYMOUR AND PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - WASHINGTON COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, October 28, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant HCP EMOH LLC ("HCP") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 23-0085642.001, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument, including HCP's motion to strike portions of the county appellees' brief.

The subject property consists of a nearly seven-acre site of land improved with an 89-unit assisted living facility constructed in 1997. A second parcel contains a parking lot and some additional improvements but is not at issue in the present appeal. The auditor initially

assessed the subject's total true value at $9,018,170. HCP filed a complaint with the BOR seeking a reduction in value to $3,600,000. At the BOR hearing, HCP amended its requested value to $3,920,000 based on an appraisal performed by Richard G. Racek, MAI, who opined that the value of the subject parcel was $3,919,510 as of January 1, 2016. Racek determined that the highest and best use for the subject property was continued use in a multifamily capacity, and performed the cost, sales comparison, and income approaches to value. The BOR issued a decision maintaining the initially assessed valuation, which HCP appealed to this board.

This board convened a hearing, at which Racek again appeared to testify regarding his appraisal analysis. The county appellees presented an appraisal report and testimony from Zach Bowyer, MAI, who concluded that the highest and best use of the subject was as an assisted living facility with memory care services. Bowyer gave primary weight to the income approach to value, performing the sales comparison approach as a test of reasonableness and to extract capitalization rates. Bowyer concluded that the value of the subject property was $13,100,000 as of January 1, 2016.

Following the hearing, the briefing schedule was stayed pending the Supreme Court's outcome in an appeal regarding the value of the subject property for a prior tax year, which was ultimately decided in *HCP EMOH, L.L.C. v. Washington Cty. Bd. of Revision*, 155 Ohio St.3d 378, 2018-Ohio-4750. In its decision, the court held that this board erred in adopting an appraisal performed by Bowyer but affirmed this board's rejection of Racek's appraisal because we determined that he utilized data from traditional apartment complexes without sufficient adjustment. On remand, this board found that the record contained insufficient evidence for this board to independently determine value and reinstated the auditor's values. *HCP EMOH, L.L.C. v. Washington Cty. Bd. of Revision*,(Oct. 22, 2019), BTA No. 2015-700, unreported.

Because the prior year's case had been decided by the court, we established a briefing schedule in this matter. HCP submitted written argument urging this board to adopt Racek's opinion of value. In their reply to appellant's initial brief, the county appellees argued that the value of the property should increase above the auditor's initial assessment. The county appellees also asserted facts that were not in evidence at the time of this board's merit hearing and attached documents to their brief. HCP moved to strike the evidence and any reference thereto in the county appellees' brief. The county appellees did not respond to the motion to strike, and, notably, did not move this board to reopen the record to present any additional evidence in light of the court's decision or new evidence of value that may have come to light after the merit hearing.

At the outset, we grant HCP's motion to strike. It is well established that this board cannot consider documents that were not part of the original record from the BOR or submitted at a hearing before this board. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). We acknowledge that the court has established a narrow exception to the general rule that new evidence may not be submitted after a hearing, specifically when evidence of transfer supplements the evidence of an impending sale already in the record. *Emerson Network Power Energy Sys., N. Am., Inc. v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 369, 2016-Ohio-8392, ¶20. In this case, however, there is nothing in the record related to an impending sale that would form the basis for the supplementation of new evidence. Thus, the documents attached to the county appellees' brief and any references thereto are hereby stricken from the record. Despite the untimeliness of the county appellees' reply brief, however, the remaining portions will be considered in our determination.

As we turn to the evidence in this case, we find it helpful to note the ways in which the

appraisals are similar to those presented in the earlier appeal, as well as the key differences. In the present appeal, the parties again relied on appraisals performed by Racek and Bowyer, and Bowyer utilized the same approaches to value and methodology for both cases. Racek, on the other hand, made two adjustments to his appraisal analysis. First, he included a cost approach to value and, second, he broadened the types of properties he utilized in his sales comparison approach to include not only traditional apartment complexes but also assisted living facilities. Another key difference between this case and the prior year is that this board cannot simply reinstate the auditor's value. During the BOR decision hearing, the auditor explained that his value is based on Bowyer's appraisal for the earlier case, which the court held this board erred in adopting. Thus, as we look to the evidence in this case, we find that Racek's appraisal is the only competent and probative evidence in the record and provides the best indication of value. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940.

Furthermore, we reject the county appellees' argument that we should again disregard Racek's appraisal. We find that the changes Racek made to his analysis made his overall opinion of value better supported, particularly his inclusion of the cost approach because of the difficulty in separating the value of the business from the value of the real estate in assisted living facilities. See, e.g., *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. While we recognize the county appellees' criticism of the market-based depreciation rates in Racek's cost approach, we disagree with their premise that they are based on traditional apartment rental rates. It is clear that Racek extracted them from the sales of other assisted living facilities after removing the value of the business operations and they are, therefore, an "apples to apples" comparison for the depreciation of the subject assisted living facility. While Bowyer's depreciation analysis may be more accurate, it is not supported with

sufficient data for this board to independently review his findings and make that determination. Thus, we find that the county appellees' criticisms lack the additional support to sustain this argument.

Finally, we acknowledge the county appellees' argument that the court's decision for 2014 is distinguishable and that the court did not outright prohibit the lease-coverage analysis as a potential methodology if done correctly. The court did appear to communicate that the approach was disfavored. Regardless, in this case, because Bowyer relied on the same "flawed inputs, it follows that any subsequent calculations built on the lease-coverage ratio, including his final opinion of value, are flawed, too." *HCP EMOH,* 155 Ohio St.3d 378, ¶20. Whether the court's prior decision reflected a "fundamental misunderstanding of the lease-coverage ratio," as the county appellees maintain in their brief, is an issue for the court to decide. This board is bound to follow the court's decision and, therefore, cannot rely on Bowyer's analysis.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$3,919,510

TAXABLE VALUE

$1,371,830

OHIO BOARD OF TAX APPEALS

GRAVES WEST VIRIGINA PROPERTIES, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-1423 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GRAVES WEST VIRIGINA PROPERTIES
Represented by:
JORDAN SCHON
PROPERTY MANAGER
GRAVES WEST VIRGINIA
PO BOX 795
WILLMAR, MN 75206

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Wednesday, October 30, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the board of education's memorandum in support, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARK ARDIRE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1402
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MARK ARDIRE
28792 WOODMILL DR.
WESTLAKE, OH 44145

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

WESTLAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Thursday, November 7, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v.*

Highland Cty. Bd. of Revision, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

20/20 REHAB, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1449
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - 20/20 REHAB, LLC
Represented by:
JOHN BARICH
MANAGING MEMBER
7571 CAPTAINS COURT
MENTOR, OH 44060

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, November 8, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DANIEL FINLEY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1224
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DANIEL FINLEY
2277 WEST 41ST. STREET
CLEVELAND , OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, November 15, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

In this case, Daniel Finley appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the subject property for tax year 2018. The BOR has filed a motion to dismiss citing Finley's failure to file his notice of appeal with the BOR. Because the record does not show Finley served his notice of appeal with the BOR, we grant the motion to dismiss.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and* the BOR within *thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It

requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

We note that even if we had jurisdiction, we would not find a reduction is warranted. First, it is unclear there is an actual dispute about value because the BOR valued the subject property at $25,000, which is the value Finley sought in his complaint. Second, Finley has submitted no probative evidence of value to this board.

For these reasons, the BOR's motion is granted, and this case is dismissed.

OHIO BOARD OF TAX APPEALS

UR HOME PROPERTIES, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1721 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - UR HOME PROPERTIES, LLC
Represented by:
RANDEL THOMAS
4793 CARSTEN LANE
NORTH OLMSTED, OH 44070

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, November 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

S. A. SCHALL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1073
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LUCAS COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - S. A. SCHALL
Represented by:
ALLEN SCHALL
7348 DEER TRAIL COURT
TOLEDO, OH 43615

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
ELAINE B. SZUCH
ASSISTANT PROSECUTING ATTORNEY
LUCAS COUNTY
711 ADAMS, SUITE 250
TOLEDO, OH 43604

Entered Monday, November 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss for lack of jurisdiction. The county asserts that appellant failed to file notice of the appeal with the Lucas County Board of Revision ("BOR") as is required by R.C. 5717.01. Appellant did not respond.

A review of the statutory transcript certified in this matter reveals that notice of the appeal was filed with the BOR on July 17, 2019. Such filing is indicated on the cover sheet of the statutory transcript and is included within the attached documents. Accordingly, the county's motion is not well taken and the motion to dismiss is hereby denied.

Turning to the merits, we note this matter is considered by the board through its small claims docket and does not serve as precedent in any other case, hearing, or proceeding. R.C.

5703.021. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, ¶24, most often satisfied by demonstrating that the property transferred between unrelated parties near tax lien date or through the submission of a competent written appraisal. *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). In considering an appeal, this board is vested with wide discretion in determining the weight to be given to the evidence, *Cardinal Federal S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision*, 44 Ohio St.2d 13 (1975), and it may adjust the property's value as requested, approve the board of revision's valuation, or reinstate the property's original assessment. *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47 (1998); *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078.

Upon consideration of the record, it is the decision and order of this board that for tax year 2018, the property shall be assessed in accordance with the following values:

PARCEL NUMBER 6596488

TRUE VALUE

$330,800

TAXABLE VALUE

$115,780

OHIO BOARD OF TAX APPEALS

ERMIONE NATSIS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-440
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ERMIONE NATSIS
Represented by:
WALTER EDWARDS
614 W. SUPERIOR AVE., SUITE 1300
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CUYAHOGA HEIGHTS LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, November 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county

board of revision provided such appeal is filed with this board *and the board of revision* within thirty days after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BBK/EASTON OFFICE, LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2153 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BBK/EASTON OFFICE, LLC
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, November 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

BBK/Easton Office, L.L.C. ("BBK") appeals from a decision of the Franklin County Board of Revision ("BOR") valuing the subject property for tax years 2017 and 2018. We decide the case on the notice of appeal, the statutory transcript, and the written argument of appellee Columbus City Schools Board of Education ("BOE").

The auditor valued the subject property at $17,881,300 for tax year 2017. The BOE filed

an increase complaint with an opinion of value at $19,500,000 per a December 2017 sale. BBK filed a counter-complaint stating the auditor's value was correct. At the BOR hearing, the BOE presented the deed and conveyance fee statement. The conveyance fee statement confirms the subject sold in December 2017 for $19,500,000. BBK called Christian Smith, MAI, who submitted a market occupancy survey developed for real property tax purposes. Mr. Smith testified he had no actual knowledge of the December 2017 sale or the subject's actual occupancy. He did not develop an appraisal. Counsel for BBK argued the subject enjoyed above-market occupancy when it was purchased, which inflated the sale price above market. However, no witnesses with knowledge of the sale or the subject property were called to discuss the sale or authenticate a lease summary, which counsel also supplied. The BOE objected to the lease summary and the factual statements of counsel. The BOR adopted the sale price, and BBK appealed.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must independently review the evidence before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

A recent, arm's-length sale constitutes the best evidence of a property's value and "creates a rebuttable presumption that the sale price reflected true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that post-dates the tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of a sale price bears "a relatively light burden and need

not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶ 41). A proponent may generally meet their initial burden with sale documents. See *Lunn* at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this case, the BOE presented a facially valid sale with the deed and conveyance fee statement, which shifted the burden of rebuttal to BBK. See *Lunn*, supra; see also *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, ¶ 14. Upon review, we do not find BBK has rebutted that presumption, and we do not find BBK's evidence is more persuasive than the sale price for the following reasons. First, no party with knowledge of the sale authenticated the lease summary, testified to actual occupancy, or testified about the sale. Statements of counsel are not evidence. *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). Without that information, we cannot compare actual occupancy with the market occupancy survey presented by Mr. Smith. Second, BBK has not demonstrated what effect actual occupancy had on the sale price. Accordingly, we find BBK has not carried its burden, and we do not find its evidence is more persuasive than the sale. See generally *Terraza 8*.

We also find the BOR was not authorized to issue its decision for 2018 because it was an open year at the time the decision was mailed to the parties. As such, this board is without jurisdiction to consider that tax year. We note, however, that there is nothing disclosed in the

record that would prevent the value determination for tax year 2017 from carrying forward into subsequent years. See *AERC Saw Mill Vill., Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468.

It is the decision of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL 010-274068-00

TRUE VALUE

$19,500,000

TAXABLE VALUE

$6,825,000

OHIO BOARD OF TAX APPEALS

SELECT MEDICAL PROPERTY VENTURES, LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2103 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SELECT MEDICAL PROPERTY VENTURES, LLC
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, November 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Select Medical Property Ventures, L.L.C. ("Select") appeals from a decision of the Franklin County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax years 2017 and 2018. We decide the case on the notice of appeal, the statutory transcript, and the parties' written arguments.

The auditor valued the subject property—three parcels—at $36,155,700 for tax year

2017. Select filed a decrease complaint with an opinion of value at $31,900,000. Counsel represented Select at the BOR hearing, but no witnesses were presented. Counsel supplied three exhibits: a square footage breakdown, a rent roll, and a print-out of the auditor's online record. Select's counsel argued the auditor had improperly classified the subject as a "medical office building" when it should have been classified as a mixed-use space or as something other than a medical office building. Select's documents indicate Select uses the majority of the space as a hospital. The remaining portion is used as "rehabilitation hospital space" along with 6,662 square feet of medical office space. The appellee Columbus City Schools Board of Education ("BOE") objected to the admission of Select's documents arguing they were unauthenticated and hearsay.

The BOR ultimately retained the auditor's value. The speaking member stated the BOR found no competent and probative evidence was presented, in part, because Select provided no fact witnesses or an appraisal. Select appealed to this board. Select waived its appearance at this board's hearing, and the parties filed merit briefs.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property

when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

The sole issue in this case is whether the auditor misclassified the subject property. The BOE's brief argues this board's review of a property's classification does not extend to subclassifications. BOE Br. at 3 (citing *Reid v. Summit Cty. Bd. of Revision* (Mar. 11, 2019), BTA No. 2018-1277, unreported). We agree. As we discussed in *Reid*, R.C. 5715.19 permits a party to challenge the auditor's classification of the property under R.C. 5713.041 "according to its principal, current use." Ohio law, however, only provides two classifications: 1) "residential and agricultural land and improvements"; and 2) "all other taxable land and improvements, including commercial, industrial, mineral and public utility land and improvements." *Reid* at 9; R.C. 5713.041; Ohio Adm. Code 5703-25-10. Here, the auditor classified the subject property as commercial, and the record is clear that classification was correct because the property is neither residential nor agricultural. Select has provided this board with no case or statute for the proposition this board can create or modify subclassifications.

We also agree with the BOE that Select has presented no competent and probative evidence of value. The BOE argues Select's documents should not be given weight because they were unauthenticated and because the data contained in the documents is unsupported by corroborating evidence. We agree. Statements of counsel are not evidence, and this board does not find the documents are probative evidence of value. *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). Even if we assume the documents are accurate, Select has not connected the dots by showing how those documents justify a return to the auditor's value for the prior triennial period. The auditor

reappraised the subject in 2017, and his reappraisal enjoys a presumption of regularity. See *Johnson v. Greene Cty. Bd. of Revision* (May 20, 2019), BTA No. 2018-912, unreported. Select's argument also assumes there were no changes to the subject or the market since the prior triennial period. We find no support for either supposition in the record. We do note one discrepancy contained in Select's brief. Select's complaint was for tax year 2017, but Select's brief states the auditor's subclassification change occurred in 2018, not 2017. However, that statement and the associated arguments seem to have been made in error since Select filed its complaint for 2017, and the subclassification for that year is "medical office building."

Therefore, we find Select has failed to carry its burden, and we see no reason to deviate from the auditor's value for tax year 2017. We also find the BOR was not authorized to issue its decision for 2018 because it was an open year at the time the decision was mailed to the parties. As such, this board is without jurisdiction to consider that tax year. We note, however, that there is nothing disclosed in the record that would prevent the value determination for tax year 2017 from carrying forward into subsequent years. See *AERC Saw Mill Vill., Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468.

We also find we are without authority to adjudicate Select's Uniformity Clause argument. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *MCI Telecomm. Corp. v. Limbach*, 68 Ohio St.3d 195 (1994) .

For these reasons, it is the decision of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 010-000189-00

TRUE VALUE

$337,900

TAXABLE VALUE

$118,270

PARCEL NUMBER 010-009067-00

TRUE VALUE

$817,800

TAXABLE VALUE

$286,230

PARCEL NUMBER 010-067214-00

TRUE VALUE

$35,000,000

TAXABLE VALUE

$12,250,000

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1686 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
TIMOTHY J. WALSH
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

HCP SELECT MEDICAL LLC
Represented by:
WAYNE PETKOVIC
ATTORNEY
840 BRITTANY DRIVE
DELAWARE, OH 43015

Entered Tuesday, November 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") valuing the subject property for tax year 2017. We now decide the case on the notice of appeal, the statutory transcript, and this board's hearing record. After this board's hearing, the BOE filed a voluntary dismissal. However, post-hearing dismissals are only available with the consent of the parties and approval of the board. See Ohio

Adm. Code 5717-1-18(A). Because the BOE filed the dismissal without the consent of all parties, its request for dismissal is denied. See *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (July 18, 2017), BTA No. 2016-2536, unreported.

[2] Property owner HCP Select Medical L.L.C. ("HCP") has also moved this board to dismiss for failure to prosecute because the BOE failed to present evidence in this appeal despite its burden to do so. We find such a sanction unnecessary since the BOE formally waived its appearance per this board's rule and because, as explained below, we find the BOE's case fails on the merits.

[3] The fiscal officer valued the subject property, two parcels, at $26,300,410 for tax year 2017. HCP filed a decrease complaint with an amended value of $21,100,000. The BOE filed a counter-complaint arguing the fiscal officer's value should be retained. At the BOR hearing, HCP presented the testimony and appraisal of Samuel Koon, MAI. He concluded to a value of $21,100,000 using the income capitalization and sales comparison approaches. The BOE presented evidence that the subject property sold in 2014. The BOR ultimately adopted Mr. Koon's opinion of value, and the BOE appealed. The BOE requested a hearing but waived its appearance at this board's hearing.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

[5] Because the BOR reduced the value based on appraisal evidence and because the BOE

is the appellant, we must first address its burden of proof under the "*Bedford* rule" and cases interpreting the rule. See *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 4, 2018), BTA No. 2017-2274, unreported. The *Bedford* rule applies when: 1) the property owner filed the complaint or counter-complaint; 2) the board of revision ordered a reduction valuation based on competent evidence offered by the property owner; 3) the board of education appeals to this board; 4) the board of revision's determination is based on appraisal evidence rather than a sale. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶ 9-11. Assuming the owner's evidence is competent, specific, and plausible, the board of revision's reduction "eclipse[s] the auditor's original valuation." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 347, 2014-Ohio-3620, ¶ 35. As a result, an appealing board of education must come forward with affirmative evidence of value; it cannot default to the auditor's value. See id.

[6] Here, the BOR adopted its value based on Mr. Koon's appraisal, which we find is competent and probative evidence of value. Mr. Koon authenticated his appraisal and supplied market data to support his appraisal. He developed his income capitalization approach using eight lease comparables and market expenses. He also calculated his capitalization rate using market data. Mr. Koon developed his sales comparison approach using six comparable facilities. He then adjusted each comparable for market condition, location, size, physical characteristics, and occupancy. Accordingly, the burden shifted to the BOE to provide affirmative evidence of a specific value. However, it presented no such evidence in this case. It waived its appearance at this board's hearing, and the only evidence it presented to the BOR was evidence of the 2014 sale, which we find is too remote to be probative evidence of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 OhioSt.3d 34, 2018-Ohio-1612.

[7] For these reasons, it is the decision and order of this board that for tax year 2017, the

property shall be assessed in accordance with the following values:

PARCEL NUMBER 68-60730

TRUE VALUE

$1,071,260

TAXABLE VALUE

$374,940

PARCEL NUMBER 68-61431

TRUE VALUE

$20,028,740

TAXABLE VALUE

$7,010,060

OHIO BOARD OF TAX APPEALS

DELAWARE CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1506 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DELAWARE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

LUTHERAN SOCIAL SERVICES CENTRAL OH DELAWARE HS
Represented by:
TIMOTHY A. PIRTLE
ATTORNEY AT LAW
2935 KENNY ROAD, SUITE 225
COLUMBUS, OH 43221

Entered Tuesday, November 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Delaware City Schools Board of Education ("BOE") appeals to this board from a decision of the Delaware County Board of Revision ("BOR") determining the value of parcel number 519-133-03-003-000 for tax year 2017. We proceed to decide the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the record

of the hearing ("H.R.") before this board, and the parties' written arguments. The BOE has moved to strike documents attached to the appellee property owner's brief (Exhibits E and F) as having been improperly submitted outside the record. The motion is hereby granted. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

The subject property is improved with a 44-unit apartment complex operated as affordable housing under the Section 202 program. For tax year 2017, the county auditor valued the property at $1,178,000. Property owner Lutheran Social Services Central OH Delaware HS ("LSS") filed a complaint seeking a decrease in value to $450,000. The BOE filed a countercomplaint seeking to maintain the auditor's initial value. At the BOR hearing, LSS presented the appraisal report and testimony of Donald E. Miller II, MAI, who opined the value of the property was $260,000 as of January 1, 2017. Mr. Miller explained in his report that the property was developed using capital advance proceeds from the U.S. Department of Housing and Urban Development ("HUD") under the Section 202 program. S.T., Ex. F at Ex. 1, p. 6. He further explained:

> In addition to a capital advance grant (subsidy) to build the project, HUD provides a subsidy through a project rental assistance contract (PRAC) identifying rights and responsibilities of HUD and the owner. Rent paid by qualified tenants is rigidly limited and tied to their income. They pay 30% of the adjusted gross income and HUD subsidizes the difference. *** Tenancy is limited to very low-income elderly residents.

Counsel for LSS noted during the BOR hearing that the subject property, and Mr. Miller's appraisal, are similar to those considered by the Ohio Supreme Court in *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2.

Mr. Miller appraised the property subject to the restrictions imposed by HUD, focusing only on the income capitalization approach to value. He determined the actual contract rents at the property ($671/unit) were within the range of conventional market rate properties, applied a 2% vacancy rate (based on actual vacancy), and looked to other affordable housing properties to determine appropriate operating expenses ($6,814/unit plus $491/unit reserve). He selected his capitalization rate (7.5% plus tax additur) from comparable sales, an investor survey, and the band of investment, to conclude to an overall value of $280,000, from which he deducted $93,515 for personal property (derived from the subject property's balance sheet), for a final value conclusion of $260,000, rounded.

The BOR adopted Mr. Miller's value, decreasing the value of the property to $260,000, and the BOE appealed to this board.

On appeal, the burden is on the BOE to provide independent evidence of value or prove legal error in the BOR's determination. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025. To meet its burden, the BOE presented the appraisal report and testimony of Thomas D. Sprout, MAI, who opined the value of the property as of tax lien date was $1,373,000. Mr. Sprout appraised the property under the hypothetical condition that the property operates on a market basis, i.e., that it is not subject to any affordable housing restrictions. Although Mr. Sprout performed a sales comparison approach, he gave most weight to his income capitalization approach. He looked to conventional market comparables in selecting his market rental rate ($675/unit), 5% vacancy rate, and operating expenses ($4,440/unit plus $300/unit reserve). Mr. Sprout noted that the actual operating expenses reported by the owner were much higher than other apartment properties. H.R. at 20. He selected a 7% capitalization rate (plus tax additur) from the band of investment, comparable

sales, and an investor survey, and, after capitalizing his estimated net operating income, concluded to an overall value of $1,395,000. He deducted $22,000 for personal property to arrive at his final value conclusion of $1,373,000.

At this board's hearing, Mr. Sprout also provided a review of Mr. Miller's appraisal report. He acknowledged the similarity between the two appraisals' income, vacancy rate, and capitalization rate determinations, but noted Mr. Miller's operating expenses were significantly higher. Mr. Sprout relayed that he was unable to determine the age or condition of Mr. Miller's expense comparables, and indicated Mr. Miller's reserve was high even for a HUD property. Overall, he noted that Mr. Miller's opinion of value is below the land value on the owner's balance sheet ($283,000).

LSS presented testimony at this board's hearing from Rick Davis, its Executive Vice President and Chief Operating Officer. The BOE objected to his testimony as being barred by R.C. 5715.19(G); we hereby overrule the objection. Mr. Davis explained that the subject property's rents are established by HUD, and are based on market surveys and the project's annual budget which may only leave residual receipts at the end of the year. Any increases in rents must be justified by increased expenses. Mr. Davis testified the subject property's management fee and reserve for replacement are set by HUD. He also testified that management of the property is more involved than in a conventional apartment property, because tenants' income eligibility must be verified and because the property employs a full-time service coordinator.

In their written arguments, the parties advocate for their appraisers' opinions of value as being more legally correct and reflective of the subject property's value. For its part, LSS again cites to the court's decision in *Notestine*, supra, and the similarity of Mr. Miller's report in this

matter to the one approved of by the court. The BOE counters that Mr. Miller's expenses are significantly overstated and result in a value so low that it is a "de facto exemption" from real property taxation. The BOE argues that Mr. Sprout's appraisal complies with prevailing case law on appraising affordable housing by not attributing any affirmative value to government subsidies.

We agree with LSS that the Supreme Court's decision in *Notestine*, supra, must guide our analysis of the appraisal evidence in this matter. The *Notestine* court explained the appropriate methodology for valuing low-income housing as follows:

> Although we did[, in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of* Revision, 151 Ohio St.3d 12, 2017-Ohio-2734,] state that use of market rents and expenses constitutes a "rule" to be applied when valuing low-income government housing generally, *id.* at ¶ 16, 22, the preference for market rent over contract rent is presumptive, not conclusive. The guiding principle from *Alliance Towers*[, *Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 (1998)], articulated in *Woda Ivy Glen* [*Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762,] and reiterated in *Columbus City Schools*, is that the valuation method must account for the "affirmative value" of government subsidies, i.e., the tendency of government subsidies to inflate the value above what the market would otherwise bear. *Woda Ivy Glen*, 121 Ohio St.3d 175, 2009-Ohio-762, ***, ¶ 28, 29; *Columbus City Schools* at ¶ 17. That "affirmative value should be adjusted out of the property valuation." *Id.*

(Parallel citation omitted.) Id. at ¶22. The court also specifically spoke to Section 202 properties, stating that the rents in a Section 202 property "appear to be minimal, and any

federal subsidization is strictly controlled by rigorous HUD-imposed restrictions on the accumulation of surpluses." Id. at ¶23. The need to look to market rent, as opposed to contract rent, is therefore unnecessary in a Section 202 property.

The BOE argues that the *Notestine* court did not address the issue of the appropriate expenses to be used, i.e., market or contract. LSS argues that using actual expenses complies with the court's directive in *Woda Ivy Glen*, supra, to take into account the restrictions imposed by the government on low-income housing. We agree. We further acknowledge that Mr. Miller compared the subject property's actual expenses to the expenses of other low-income housing properties. Such analysis is appropriate. As the court acknowledged in *Columbus City Schools Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254, at ¶ 20, consideration of an appropriate subset of the market is appropriate where a property operates in such market subset. There is no dispute that the subject property operates in the low-income housing market, and, as a result, incurs expenses higher than the conventional market to comply with HUD requirements and the restrictions imposed by the Section 202 program. We find Mr. Miller's expenses, though admittedly high, are appropriate for the subject property. The BOE has presented no other low-income housing expense data to contradict the comparables upon which Mr. Miller relies, and we find it appropriate to rely on Mr. Miller's representation that his expense comparables are sufficiently similar to the subject property in age and condition to render them applicable to his income analysis.

In contrast, we find that Mr. Sprout's appraisal methodology, which ignores any restrictions imposed by the Section 202 program, is inappropriate. As we recently found in *Abbey Church Village (TC2) Housing LP v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported, an appraisal of low-income housing that fails to take into account

the government-imposed restrictions and, instead, values the property as if it were a conventional market property, runs afoul of the court's recent low-income housing decisions. Because we find his methodology flawed, we do not find that Sprout's appraisal report meets the BOE's burden on appeal to prove a value different from that adopted by the BOR. *Dublin City Schools*, supra.

Based upon the foregoing, we find the BOE has failed to meet its burden on appeal. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$260,000

TAXABLE VALUE

$91,000

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1325, 2017-1326, 2017-1328, 2017-1329, 2017-1330, 2017-1331, 2017-1332, 2017-1333, 2017-1336, 2017-1337, 2017-1338 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

BRE/COH, LLC & DCP1
Represented by:
WAYNE E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

Entered Tuesday, November 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Columbus City Schools Board of Education and the Dublin City Schools Board of Education (collectively "BOE") appeal from a series of decisions by the Franklin County Board of Revision ("BOR") valuing seven properties for tax year 2016. The BOE and property owners, BRE/COH, L.L.C. and DCP1 (collectively "BRE") presented evidence at this board's hearing, and both submitted written argument. We now decide the case on the notice of appeal,

the transcripts certified by the auditor, this board's hearing record ("H.R."), and the parties' written arguments.

The subject properties, office buildings, were marketed and sold as a commercial portfolio to DCP1 LP and DCP 2 LP (collectively, "buyers") for $77,000,000 on March 1, 2017. The properties were owned by BRE Midwest Pooled Office Owner LLC and BRE/COH OH LLC (collectively, "sellers"). While generally close to one another, the properties do not operate as a single economic unit. The sale documents refer to the portfolio as the "Dublin, Ohio Portfolio" or simply the "Dublin Portfolio." Sellers marketed the portfolio using an agent, and at least some of the marketing materials are included in the record. The executive summary states:

> CBRE Capital Markets has been retained as the exclusive advisor and agent to solicit bids and conduct a fee interest sale of seven (7) Class A office buildings in Dublin, Ohio totaling 1.1 million square feet.***Constructed between 1991-2002, these multi-story, multi-tenanted buildings have been institutionally maintained and are currently 76% leased, producing significant income from investment-grade tenants in Columbus' largest and most desirable suburban office market.

See BOR Case No. 2016-85, Ex. F. The marketing materials likewise include the bidding procedure. The "Due Diligence & Bidding Procedures" section reads:

> The Portfolio is a targeted offering to be marketed to a pre-determined group of prospective purchasers. The Portfolio will be sold in a sealed bid offering with submittals evaluated based upon a number of criteria established at Seller's sole discretion, including but not limited to the purchase price for the Properties, the

prospective purchaser's financial qualifications, the prospective purchaser's ability to perform within the time frame specified, the prospective purchaser's requested changes to the form purchase and sale agreement, the prosepective purchaser's experience in purchasing commercial real estate, and other factors, including specified conditions to the bid.

***

Prospective Purchasers who are interested in bidding on the Properties must submit an initial offer ("Indicative Bid") and are encouraged to review all available information relating to the Property prior to submitted said Indicative Bid. Seller will evaluate the Indicative Bids for the Properties, and reserves the right in its sole discretion to hold a "Best and Final" round of bidding, to move directly to closing based on Indicated Bids or to reject all Indicated Bids. In the event of a "Best and Final" round, Seller expects to select bidders whose indicative Bids are in an acceptable range.

Indicative Bids will not constitute a binding offer by the prospective purchaser to purchase the Property for the price submitted, and if Seller approves any Indicative Bid, Seller will not be obligated to sell the Property unless, and until a contract, in a form acceptable to Seller, has been fully executed and delivered by Seller and Buyer and any conditions thereunder have been satisfied or waived by Seller. Seller, however, reserves the right to accept or reject any or all bids, regardless of bid price, or to withdraw the Property from the sale, in its sole and absolute discretion, for any reason or for no reason.

Id. Indicative Bids were due September 29, 2016 and final bids due October 12, 2016.

At the BOR hearing, sellers' property tax manager testified the final purchase price of $77,000,000 was ultimately negotiated between sellers and buyers. She, however, was not involved in the negotiation or allocation of the sale price to the individual properties. The purchase agreement signed by the parties lists an aggregate "Purchase Price" of $77,000,000 and an "Allocable Purchase Price" specific to each of the seven constituent properties. The Allocable Purchase Prices are defined in the closing documents. The parties appear to have signed the purchase agreement in October 2016 and closed in February 2017. Because there were multiple buyers and sellers, multiple conveyance fee statements were filed. The property tax manager testified the sellers were pleased to sell the properties as a portfolio.

The closing statement lists the allocation as purportedly agreed upon by the parties. They allocated the sale as such:

$6,000,000 - 5555 Parkcenter Circle

$2,000,000 - Parkwood Place

$ 32,000,000 - Atrium II

$16,000,000 - Blazer I & II

$17,300,000 - Parkwood II

$13,000,000 - Emerald III

$7,000,000 - 5515 Parkcenter

$77,000,000 – Total

Importantly, the record is generally devoid of competent evidence about how the parties came to this allocation. The only evidence is the testimony of sellers' property tax manager who simply testified the allocation was "negotiated," but she had no knowledge of the substance of

the negotiations.

In light of the sale, the buyers and BOE filed complaints and corresponding counter complaints on each property. At the BOR, the buyers abandoned the allocation arguing instead the purchase price should be allocated proportionate to the auditor's original values per *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. The BOR ultimately accepted BRE's *FirstCal* allocation, and the BOE appealed to this board.

At this board's hearing, the BOE argued both the aggregate sale price and the allocated sale prices should be disregarded because the sale included a number of "throwaways" that pulled down the aggregate sale price below the market. Accordingly, the BOE argued neither the aggregate sale price nor the allocated sale prices were indicative of value. BOE Br. at 2-3. Instead, the BOE offered seven appraisals by Samuel Koon, MAI. In his appraisals, he did not give the allocation any weight because the "extremely low allocations to two buildings in the sale" suggested to him the allocation was arbitrarily adopted for tax planning reasons without relation to the actual market value of the properties. Id. at 3. Mr. Koon also noted the allocation for Parkwood Place and Parkwood II were "below the land value" even though the land is improved with office buildings. See BOE Br. at 3.

The BOE relies heavily on *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 371, 2012-Ohio-2844, ¶ 19 ("*Alexander Road*"), which stated "the validity of using the allocated sale price depends upon the propriety of the allocation; if the BTA finds that an allocation is not proper, or that a proper allocation is not possible based upon the evidence before it, then the sale price is not determinative." The Ohio Supreme Court has also held a sale price should be disregarded when "no convincing allocation of the sale price" is offered. *St.*

Bernard Self-Storage L.L.C. v. Hamilton Cty. Bd. of Revision, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶ 18. Moreover, the Ohio Supreme Court has noted it has not "hesitated to authorize a departure from a recent sale price when a bulk sale price cannot be properly allocated." Id.; see also *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Aug. 25, 2009), BTA No. 2007-A-474, unreported. Appraisal evidence can show an aggregate sale price does not produce reliable values for the constitute properties for ad valorum tax purposes. See, e.g., *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664; see also *Alexander Road*, supra.

Having reviewed the sale documents, testimony, and Mr. Koon's appraisals, we agree with the BOE that the allocations of the bulk sale are not indicative of value. The sale price is not determinative because "no convincing allocation of the sale price was offered" by BRE. See *St. Bernard*, supra, at ¶ 18. Here, even BRE asks this board to simply disregard the allocation. We also note BRE failed to supply any witness with actual knowledge of the negotiations despite the fact that the allocated amounts were arbitrary (a point on which all parties agree). Therefore, per *St. Bernard*, we look to "some other independent evidence" of value, i.e., Mr. Koon's appraisals. We find his appraisals to be the best evidence of value for each property individually. Mr. Koon developed an appraisal for each property using the sales comparison and income capitalization approaches.

BRE argues the appraisals should be disregarded for three general reasons. First, BRE alleges Mr. Koon did not verify his sales comparables. Second, BRE alleges Koon utilized "leased fee" sales. Third, BRE claims, Koon ignored actual rents. For the following reasons, we disagree with BRE's factual claims and find Mr. Koon's appraisal is sufficiently reliable.

With regard to sale verification, Mr. Koon seems to have indicated at this board's

hearing that his associate verified the transaction. The confusion seems to arise from Mr. Koon's statement did not know *how* his associate verified the transactions, e.g., via phone, email. While BRE is correct that this board has required verification of sales, BRE points to no case wherein this board has held that task cannot be delegated to a qualified associate. With regard to Mr. Koon's use of leased fee sales, this board has not disregarded sales comparables subject to market rate leases where they are appropriately adjusted. See *Lowe's Home Centers, LLC v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported. The record is devoid of evidence the sales comparables Mr. Koon employed were leased above market. More importantly, Mr. Koon placed the greatest weight on his income approach and simply used his sales comparison approach "to provide strong support." Ex. 1 at F-2.

Additionally, Mr. Koon was not required to use actual rents and expenses. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of* Revision, 75 Ohio St.3d 552 (1995) (actual income and expenses may be used if both conform to the market). He was only required to show expenses that "reflected the industry standard and whether the industry standard reflected the market in which the subject property would have competed on the tax lien date." *Ravenna School Dist. Bd. of Edn. v. Portage Cty. Bd. of Revision* (Jan. 18, 2019), BTA No. 2017-1497, unreported. Accordingly, we find Mr. Koon's appraisals are the best evidence of value despite BRE's arguments. We also note that Koon's appraisal shows the "throwaway" properties were substantially undervalued in the allocation, but BRE has presented no evidence to explain the large discrepency.

It is the decision and order of this board that for tax year 2016, the properties shall be assessed in accordance with the following values:

PARCEL NUMBER 273-012233

TRUE VALUE

$16,500,000

TAXABLE VALUE

$5,775,000

PARCEL NUMBER 273-009751

TRUE VALUE

$14,900,000

TAXABLE VALUE

$5,215,000

PARCEL NUMBER 273-007673

TRUE VALUE

$10,700,000

TAXABLE VALUE

$3,745,000

PARCEL NUMBER 273-007011

TRUE VALUE

$13,000,000

TAXABLE VALUE

$4,550,000

PARCEL NUMBER 273-005765

TRUE VALUE

$6,021,280

TAXABLE VALUE

$2,107,450

PARCEL NUMBER 010-220562

TRUE VALUE

$378,720

TAXABLE VALUE

$132,550

PARCEL NUMBER 273-008241

TRUE VALUE

$29,000,000

TAXABLE VALUE

$10,150,000

PARCEL NUMBER 273-010594

TRUE VALUE

$15,800,000

TAXABLE VALUE

$5,530,000

OHIO BOARD OF TAX APPEALS

LAVALLE MICHELE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1861
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LAVALLE MICHELE
Represented by:
MICHELE LAVALLE
6752 MIDDLEBROOK BLVD.
MIDDLEBURG HTS., OH 44130

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, November 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county alleges the complaint was filed by the owner's brother (Paolo Lavalle), a non-attorney, on her behalf. As such, the county argues the filing of the complaint constituted the unauthorized practice of law and therefore failed to vest jurisdiction in the Cuyahoga County Board of Revision ("BOR"). Appellant did not respond to the motion.

[2] The General Assembly has provided that only certain persons may file complaints against the valuation of real property. R.C. 5715.19(A) provides that "[a]ny person owning taxable real property in the county" may file a complaint. There is no indication that Paolo Lavalle

owns taxable real property in Cuyahoga County. R.C. 5715.19(A) also provides that specified non-attorneys may file as agents of an owner of taxable real property; family members, with the exception of the owner's spouse, are not among those who are authorized to file. This board has previously determined that non-attorney family members are not authorized to file complaints on behalf of family members. See, e.g., *Voudouris v. Lucas Cty. Bd. of Revision* (Oct. 5, 2007), BTA No. 2006-H-1807, unreported. There is no indication that Paolo Lavalle is an attorney licensed in Ohio. As such, we find he is not authorized to file a complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244; *Sharon Village, Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997).

[3] Based upon the foregoing, we find that the underlying complaint was not filed by an authorized complainant, and therefore failed to invoke the jurisdiction of the BOR. The county's motion is well taken. It is the decision of this board that this matter be remanded to the Cuyahoga County Board of Revision with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

DANIEL B JACOBSON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1437
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DANIEL B JACOBSON
Represented by:
DAN JACOBSON
11915 OAKHURST AVE
CONCORD, OH 44077

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

RIVERSIDE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, November 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county

board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
	)	CASE NO(S). 2018-1263
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

HUMMEL ELDERLY HOUSING LP
Represented by:
JOSEPH J. RECCHIE
1263 EAST BROAD STREET
COLUMBUS, OH 43205

Entered Friday, November 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the Groveport Madison Local Schools Board of Education's ("BOE") notice of appeal from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel number 530-246556-00 for tax year 2017.

We decide the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of the hearing ("H.R.") before this board, and the parties' written arguments.

The subject property is an 82-unit low-income senior housing community. For tax year 2017, the Franklin County Auditor valued the property at $2,750,000. Property owner Hummel Elderly Housing LP ("Hummel") filed a complaint seeking a decrease in value. The BOE filed a countercomplaint seeking to maintain the auditor's value. At the BOR hearing, Hummel presented the appraisal report and testimony of David R. Hatcher, MAI, who opined the value of the property as of January 1, 2017 was $1,678,000. Although Mr. Hatcher testified only 18 of the subject's units are subject to rent restrictions under the Low Income Housing Tax Credit ("LIHTC") program, Hummel's counsel clarified that 100% of the units are subject to rent restrictions, with 18 restricted to 30% of adjusted median gross income ("AMGI") and the remainder at 47% of AMGI. In the absence of any evidence to rebut Mr. Hatcher's appraisal, the BOR accepted his opinion as the value of the property and decreased the value of the property to $1,678,000.

On appeal to this board, the BOE presented the appraisal report and testimony of Thomas D. Sprout, MAI, who opined the subject property's value was $2,719,000. Mr. Sprout appraised the property as if it were not subject to *any* rent restrictions. The BOE argued that Hummel failed to provide evidence that the property is subject to rent restrictions, and, even if it were, Mr. Hatcher's appraisal failed to follow recent case law on appraising LIHTC properties. Hummel countered that such restrictions are public record and that only Mr. Hatcher appropriately accounted for the restrictions. Mr. Sprout also reviewed Mr. Hatcher's appraisal report, noting the difference in his choice of rental rates and capitalization rate.

At the outset of our review, we must first address the evidence before us as to the nature any restrictions under which the subject property operates. The BOE argues that Hummel has failed to provide evidence that the subject property is subject to LIHTC restrictions. Hummel counters that such documents are a matter of public record; however it does not dispute that documents confirming any restrictions imposed on the subject property have not been introduced at any stage of these proceedings. Notably, counsel for the BOE asked for such documentation at the BOR hearing. Whether or not the property is subject to LIHTC restrictions is a key consideration in our determination of value, as the Supreme Court has indicated such restrictions must be taken into account when valuing real property for tax purposes. *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762. See also R.C. 5713.03. Despite multiple opportunities at which to provide the information, and its repeated statement that relevant documents are readily available as public records, Hummel has failed to properly present evidence of any restrictions to which the property is subject. This board must consider an appeal upon the transcript certified by the auditor and evidence properly submitted and accepted during our own proceedings. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). See also *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746, ¶4, fn.1 ("The rule allowing courts to take judicial notice of certain facts is not 'an exception to the rule that evidence must be timely offered in a judicial proceeding.' *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, ***, ¶ 8, fn.1." (Parallel citation omitted.)); *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998) ("statements of counsel are not evidence."); *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, ¶36. Because the record before us lacks probative evidence that the

subject property is subject to LIHTC restrictions, we will not consider such restrictions in determining the value of the property as of tax lien date.

In light of such determination, we turn to the parties' appraisal evidence. The appraisers agree that the highest and best use of the property is its current use as multi-family residential housing. Both appraisers also agree that the income capitalization approach is the most appropriate method to determine the value of this type of property. In his income approach, Mr. Hatcher compared the subject's actual rents to the market and concluded that the rates for all but the five two-bedroom units rented under Section 8 (which he adjusted upward) were at market rates; however, he clarified on his cross-examination during the BOR hearing that he relied on actual, below-market rates for the 18 units he indicated were subject to a LIHTC restriction at 30% AMGI. He deducted 5% for vacancy and credit loss based on market experience, concluded the subject's actual operating expenses were in line with the market, and deducted $279/unit for replacement reserves, to arrive at a net operating income of $193,130. He capitalized the income at 11.51% (including a tax additur) to opine a final value of $1,678,000.

Mr. Sprout relied on both the sales comparison and income capitalization approaches to value. Under his sales comparison approach, he looked to four sales of conventional apartment projects that sold for between $27,431 and $37,500 per unit between 2015 and 2018. After adjustments, he concluded to a value of $33,000 per unit for the subject property, or $2,700,00 overall. Under his income approach, Mr. Sprout found the subject's actual rent rates to be below market, and concluded to $600/month for the one-bedroom units (compared to actual rates of $375 and $589) and $700/month from the two-bedroom units (compared to actual rates of $605 and $682). He added $50/unit for utility reimbursements, given that all utility costs are borne by

the landlord. H.R. at 14. Like Mr. Hatcher, he concluded to a vacancy rate of 5%. Mr. Sprout also found the subject's operating expenses ($353,357) were slightly below market and estimated operating expenses of $357,518 plus $300/unit for reserve. He concluded to a net operating income of $290,242, which he capitalized at 10.52% (including a tax additur) to conclude to an overall value of $2,760,000. He deducted $41,000 for personal property to arrive at a final value conclusion of $2,760,000.

It is clear from review of each appraiser's income approach that the main difference is the selection of appropriate rental rates. We note that, even had Hummel properly presented evidence of LIHTC or similar restrictions imposed on the property, the court in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254, explained that, for low-income housing, "'in applying the income approach, *market rents and expenses*, as opposed to the actual rents of the properties at issue are used.' *** Second, in using 'an income approach, government subsidies should not be taken into account in a way that would increase the value of the property.'" (Emphasis added.) Id. at ¶17, quoting *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ¶16-17. We therefore reject Mr. Hatcher's reliance on the subject's actual rental rates for the 18 units he indicated were subject to LIHTC restrictions at 30% AMGI.

Upon review of both appraisers' market rental data, we find Mr. Sprout's rental rates, including his $50/unit utility reimbursement, are better supported. Although Mr. Hatcher indicated he found the subject's actual rates (excepting the eighteen 30% AMGI units) were at market, his own comparables indicate higher rates. We further agree with Mr. Sprout's capitalization rate as being more appropriate for the subject property. The sales upon which Mr. Hatcher relies for his capitalization rate are of properties built between 1960 and 1990,

compared to the subject property which was built in 2000. Overall, we find Mr. Sprout's conclusion of value better supported.

Based upon the foregoing, we find the BOE has met its burden on appeal and find Mr. Sprout's opinion of value is the best evidence of the subject property's value as of tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$2,719,000

TAXABLE VALUE

$951,650

OHIO BOARD OF TAX APPEALS

WILLIAM SHUKIS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1196
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - WILLIAM SHUKIS
Represented by:
BILL SHUKIS
6521 IROQUOIS
MENTOR, OH 44060

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Friday, November 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

661 EAST RIVER, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-797
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - 661 EAST RIVER, LLC
Represented by:
DAVID R. DARBY, ESQ.
KOOPERMAN GILLESPIE MENTEL, LTD.
100 S. FOURTH STREET
COLUMBUS, OH 43215

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Friday, November 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. This matter is decided upon the motion, appellant's response, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, notice of the appeal was filed with the BOR fifty-five days after the mailing of the BOR's decision. Appellant acknowledged the untimeliness of its notice of appeal. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

TRACY M. BOWEN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1976
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - TRACY M. BOWEN
OWNER
2184 COPLEY RD
AKRON, OH 44320

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Friday, November 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On September 23, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion the affidavit of the clerk for the Summit County Board of Revision, stating that there is no record of a decision issued for such application.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SHANNON B. BEATTY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1139
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - SHANNON B. BEATTY
Represented by:
SHANNON BEATTY
1852 W. 57th STREET
CLEVELAND, OH 44102

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, November 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, appellant's response, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

A review of the statutory transcript certified to this board indicates that the owner did not file notice of the appeal with the BOR. In response, the owner provided documentation that notice of the appeal was filed with the county's assistant prosecutor. Initially, we note that "although a county prosecutor acts as counsel for the BOR, the prosecuting attorney is not authorized to accept a notice of appeal in lieu of filing such notice with the BOR." *Kinat v. Lake Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2010-Y-1213, unreported, citing *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621 (1998). Moreover, the owner did not provide any proof that the notice of appeal was received by the BOR. As the Supreme Court noted in *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, ¶10 (quoting *United States v. Lombardo*, 241 U.S. 73, 76 (1916)) "[a] paper is filed when it is delivered to the proper official and by him received and filed." See, also, *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶21. We find appellant's documentation does not satisfy the requirement of the statute to file notice of the appeal with the board of revision within thirty days.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter.

Accordingly, the county appellees' motion is well taken. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

UNITED STATES OF AMERICA, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-862 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - UNITED STATES OF AMERICA
Represented by:
LORI UMINSKI
SETTLEMENT PROCESSOR
CWSAMS
7998 DONEGAN DRIVE
MANASSAS, VA 20109

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, November 22, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, notice of the appeal was filed with the BOR forty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THE TRISTER MARKETING GROUP, INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1128 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE TRISTER MARKETING GROUP, INC
Represented by:
ARYEH I. DORI
ATTORNEY AT LAW
P. O. BOX 18075
CLEVELAND HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, November 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THE TRISTER MARKETING GROUP, INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1126 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE TRISTER MARKETING GROUP, INC
Represented by:
ARYEH I. DORI
ATTORNEY AT LAW
P. O. BOX 18075
CLEVELAND HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, November 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VAZ PROPERTIES LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1691
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - VAZ PROPERTIES LLC
Represented by:
UMESH VAZIRANI
MANAGER
2247 PLANETREE COURT
COLUMBUS, OH 43235

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, November 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days*

after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notice of appeal was not filed with the Franklin County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GINA M. WOOD, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1341
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GINA M. WOOD
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, November 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THE TRISTER MARKETING GROUP, INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1131 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE TRISTER MARKETING GROUP, INC
Represented by:
ARYEH I. DORI
ATTORNEY AT LAW
P. O. BOX 18075
CLEVELAND HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, November 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THE TRISTER MARKETING GROUP, INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1130 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE TRISTER MARKETING GROUP, INC
Represented by:
ARYEH I. DORI
ATTORNEY AT LAW
P. O. BOX 18075
CLEVELAND HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, November 26, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DEAN CASAPIS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-802
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DEAN CASAPIS
OWNER
11689 WESTON PT
STRONGVILLE, OH 44149

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Tuesday, December 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the filing of a motion to dismiss filed by the county appellees. By way of the motion, the county appellees asserted that the property owner failed to file a copy of the notice of appeal with the board of revision ("BOR") as required by R.C. 5717.01. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified consistent with R.C. 5717.01, and county appellees' motion to dismiss and property owner's responses.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and* the board of revision within thirty days after notice of the decision of the county board of revision is mailed. See, also, R.C.

5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Here, the property owner advanced three primary arguments in opposition to the motion to dismiss. First, he asserted that he hand-delivered a copy of the notice of appeal at the BOR. Unfortunately, he failed to come forward with evidence to support this assertion. Upon dispute, an appealing party has an affirmative burden of proving that all statutory requirements were satisfied to invoke this board's jurisdiction.

Second, he argued that this matter should not be dismissed based upon a "technicality." As noted above, the requirements of R.C. 5717.01 are specific and mandatory, not an "technicality," and must be followed in order to invoke this boards jurisdiction. *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). This board, as a creature of statute, only has the jurisdiction, power and duties expressly given by the General Assembly. *Steward v. Evatt*, 143 Ohio St. 547 (1944); *Leiphart Lincoln-Mercury, Inc. v. Bowers*, 107 Ohio App. 259 (1958).

Third, he contended that dismissing this appeal would be unfair. We sympathize with the property owner; however, this board does not have equitable jurisdiction and, therefore, cannot grant the property owner the relief that he seeks out of a sense of fairness. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

To the extent that the property owner also argued that his status as a non-attorney should weigh in favor of not dismissing this appeal, we must reject such argument. By proceeding in a pro-se capacity, the property owner risked the possibility that he may not have had a complete understanding of the appeal process; however, his election to proceed pro se does not relieve him of the responsibilities imposed upon him. See, e.g., *Phelps v. Ohio Atty. Gen.*, 10th Dist. Franklin No. 06AP-751, 2007 Ohio 14, at ¶8 ("We recognize that appellants are acting pro se. Nevertheless, a pro se litigant '"is held to the same rules, procedures and standards as those litigants represented by counsel and must accept the results of her own mistakes and errors."').

Nevertheless, we note that even if we had had jurisdiction to consider the merits of this appeal, we would have concluded that the property owner failed to provide competent, credible, and probative evidence of the subject property's value. See *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."); *Moskowitz v. Cuyahoga Cty. Bd. of Revision* , 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales).

Based upon the foregoing, we must conclude that this board lacks jurisdiction to consider the merits of this matter. As such, we grant the county appellees' motion and dismiss this appeal.

OHIO BOARD OF TAX APPEALS

KULWANT AULAK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2058
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - KULWANT AULAK
14818 SHAKER BLVD
SHAKER HTS., OH 44120

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, December 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis the notice of appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of

appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DALLAS ENTERPRISES LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2049 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DALLAS ENTERPRISES LLC
Represented by:
STEVE ANELLO
50 ROUTE 23
PEQUANNOCK, NJ 07440

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BEDFORD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
THOMAS A. KONDZER
THE LAW OFFICE OF THOMAS A. KONDZER, LLC
1991 CROCKER ROAD, SUITE 600-712
WESTLAKE, OH 44145

Entered Tuesday, December 3, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees, joined by the board of education, move to dismiss this matter on the basis the notice of appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the board of education's motion in support, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

FREDERICK W. LEICK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-895
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - FREDERICK W. LEICK
OWNER
23550 WESTWOOD ROAD
WESTLAKE, OH 44145

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, December 4, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss for lack of jurisdiction, the responses thereto, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

The county argues that appellant has failed to follow the statutory requirements to invoke this board's jurisdiction. This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000). "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). R.C. 5717.01 provides that "[a]n appeal from a decision of a county board of revision may be taken to the board of appeals within

thirty days after notice of the decision of the county board of revision is mailed ***." It further provides that "[s]uch appeal shall be taken by filing of a notice of appeal *** with the board of tax appeals *and with the county board of revision*." The county asserts that appellant failed to file notice of the appeal with the Cuyahoga County Board of Revision ("BOR").

Appellant has not provided any evidence indicating notice was properly provided to the BOR. In his response to the motion, he indicates he did not serve the assistant prosecuting attorney because he did not receive his entry of appearance. However, service on the assistant prosecuting attorney does not meet the requirement of R.C. 5717.01 to file notice of the appeal with the BOR. As the Supreme Court explained in *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 80 Ohio St.3d 621, 623 (1998):

> R.C. 5715.44 provides that the county prosecutor is to act as counsel for the board of revision in defending any proceedings in any court in which the board of revision is a party. However, neither R.C. 5715.44 nor R.C. 5717.01 authorizes an appealing party to serve, or the prosecuting attorney to accept, a copy of a notice of appeal in lieu of filing with the board of revision.

Appellant's argument regarding his failure to timely receive the assistant prosecutor's entry of appearance is therefore not relevant to whether he properly invoked this board's jurisdiction.

Based upon the foregoing, we find no evidence that appellant satisfied the statutory requirement to file notice of the appeal with the BOR. It is therefore the order of this board that this matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

ANTHONY RAFFA & MICHELE KEATING TRUSTEES, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1309, 2019-2297 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANTHONY RAFFA & MICHELE KEATING TRUSTEES
Represented by:
JAMES AVENIE
ESQUIRE
RANALLO & AVENI LLC
6685 BETA DRIVE
CLEVELAND, OH 44143

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

MADISON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

We consider these matters upon motions to dismiss filed by the county appellees. In each motion, the county asserts that appellants failed to follow the statutory procedure for filing appeals from county boards of revision by not timely filing notice of the appeal with the Lake County Board of Revision ("BOR"). We note that these two appeals appear to be duplicative, as

they appeal the same BOR decision, and have been consolidated for decision purposes. We decide the matter upon the motions, appellants' responses, the statutory transcript certified by the BOR, and appellants' notices of appeal.

Appellants appeal to this board under R.C. 5717.01, which provides that "[s]uch appeal[s] shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals *and with the county board of revision*." (Emphasis added.) Such notices must be filed within thirty days of the BOR's decision. Id. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). See also *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746; *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000).

In their responses to the county's motions, appellants do not appear to dispute that *they* failed to file notice of the appeals with the BOR. Indeed, they have presented no evidence to the contrary. Instead, they argue no evidence has been presented to support the BOR's contention that appellants did not file notices of the appeals with the BOR. We reject appellants' argument. The burden is on appellants to demonstrate they complied with the statutory filing requirements and properly invoked the jurisdiction of this board. *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, 136 Ohio St.3d 146, 2013-Ohio-3077, ¶10, quoting *Ohio Natl. Life Ins. Co. v. United States*, 922 F.2d 320, 324 (6th Cir.1990). The record before us contains the certification of the county auditor (on DTE Form 3, the cover to the statutory

transcript) that the BOR never received notice of the appeal docketed as BTA 2019-1309. The record also demonstrates that the notice of appeal docketed as BTA 2019-2297 was filed with this board more than thirty days after the mailing of the BOR's decision on July 29, 2019.

Appellants argue that the BOR did, in fact, receive notice of the appeals, and filed the statutory transcript with this board in response to such notice. We reject appellants' argument that notification of the filing of the appeals from this board satisfies appellants' statutory obligation to file notice of the appeal with the BOR. The Supreme Court has specifically held that notices from this board do not comply with the requirement of R.C. 5717.01:

> [T]he BTA has no statutory duty to inform a board of revision that an appeal has been filed. The statute burdens appellants with this duty. Appellants may not substitute the BTA's voluntary deeds for their required acts.

Austin Co. v. Cuyahoga Cty. Bd. of Revision, 46 Ohio St.3d 192, 194 (1989). Despite appellants' argument that there is "no legitimate reason" for the need to file separately with the BOR when a party uses this board's electronic filing system, this board must apply the appellate statute as written by the General Assembly. See *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 238, 2018-Ohio-230, ¶10. See also *Columbus S. Lumber Co. v. Peck*, 159 Ohio St.3d 564, 569 (1953) (BTA lacks equitable jurisdiction).

We further reject the argument that, by delivering notice of a filing to a county board of revision, this board becomes an "authorized delivery service" under R.C. 5717.01. The approval of an "authorized delivery service" is governed by R.C. 5703.056, under which the Tax Commissioner may authorize delivery services that meet specified criteria. This board's electronic filing system is not an authorized delivery service. See Ohio Adm. Code 5703-1-13.

Finally, appellants argue that neither the BOR nor this board notified appellants of the

steps to follow to meet their statutory filing requirements. Specifically, they argue that the instructions accompanying the notice of appeal form (DTE Form 4) indicate that notice of an appeal must be filed with a county board of revision, but do not include instructions on specifically how to file with a county board of revision. We reject the argument. Estoppel does not apply against the state. See *Reynolds Ave. Transfer Station v. Franklin Cty. Bd. of Revision* (Nov. 30, 2001), BTA No. 2001-S-217, unreported; *Psathas v. Cuyahoga Cty. Bd. of Revision* (Jan. 12, 2001), BTA No. 2000-M-1471, unreported; *Salama v. Cuyahoga Cty. Bd. of Revision* (Nov. 9, 2007), BTA No. 2007-V-450, unreported.

Based upon the foregoing, the county appellees' motions to dismiss are well taken. The record before us does not demonstrate that appellants followed the mandatory statutory procedures to properly invoke the jurisdiction of this board. Accordingly, these appeals must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

THOMAS P. CLIFFEL AND MARTHA C. CLIFFEL, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1846 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMAS P. CLIFFEL AND MARTHA C. CLIFFEL
Represented by:
THOMAS P. AND MARTHA C. CLIFFEL
OWNERS
1000 PARKSIDE DRIVE
LAKEWOOD, OH 44107

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the Cuyahoga County Board of Revision ("BOR"). Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On September 16, 2019, the appellants filed an application for remission with this board. Appellants did not include a copy of a BOR decision. The record does not demonstrate that the BOR issued a decision in this matter.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LAWRENCE FENKO, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1711
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LAWRENCE FENKO
17007 LAVERNE AVE.
CLEVELAND, OH 44135

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of

appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

YES WE CAN COMMUNITY HOMES, INC., (et. al.), Appellant(s), vs. ALLEN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2065 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - YES WE CAN COMMUNITY HOMES, INC.
Represented by:
LESLIE R. HENDERSON
YES WE CAN COMMUNITY HOMES, INC.
311 E. MARKET STREET
SUITE 104
LIMA, OH 45801

For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is considered upon the county appellees' motion to dismiss. The county alleges that this notice of appeal was filed more than thirty days after the mailing of the Allen County Board of Revision's ("BOR") decision. We decide the matter upon the motion, the responses, the notice of appeal, and the statutory transcript certified by the county auditor.

[2] The statutory transcript demonstrates that the BOR mailed notice of its decision in this matter on August 22, 2019. Under R.C. 5717.01, an appeal from a decision of a county board of revision may be taken by filing notice of the appeal with this board and with the board of revision within *thirty days* of the mailing of the board of revision's decision. Here, that deadline

was September 23, 2019. Appellant filed notice of this appeal with this board on September 30, 2019; the statutory transcript indicates notice of the appeal was filed with the BOR on the same day. The county appellees move this board to dismiss this matter for failure to comply with the statutory thirty-day filing period. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). See also *Ross v. Cuyahoga Cty. Bd. of Revision,* 155 Ohio St.3d 373, 2018-Ohio-4746; *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000).

[3] This board received two responses to the county's motion. We initially note that neither were filed by attorneys; instead, they were filed by what appear to be corporate officers on behalf of the corporate owner. To the extent the responses contained legal argument, such arguments are hereby stricken from the record as constituting the unauthorized practice of law. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶18, fn.2 ("[A] non-attorney who prepares legal papers to be filed in court on behalf of a corporate entity *** engages in the unauthorized practice of law."); Ohio Adm. Code 5717-1-02(B) ("Any non-attorney acting on behalf of a party may not make legal argument, examine witnesses, or undertake any other tasks that can be performed only by an attorney."). Considering those factual statements in the responses, we find none are responsive to the jurisdictional issue raised by the county. Nowhere does appellant allege it timely filed notices of this appeal. Instead, the responses focus on the underlying issue on the merits of the appeal. This board may not reach the merits of this appeal until appellant has demonstrated it has properly invoked this board's jurisdiction. Upon review of the record, we find it has not done so.

[4] Based upon the foregoing, the county appellees' motion is well taken. The record before us indicates appellant has not complied with the statutory requirements for properly filing an appeal with this board. It is therefore the decision of this board that this matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

WYMAN STRACHAN, ET AL, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2051 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WYMAN STRACHAN, ET AL
Represented by:
DAVID DIFIORE
ATTORNEY
405 ROTHROCK ROAD
SUITE 103
AKRON, OH 44321

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

NORTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ELIZABETH GROOMS-TAYLOR
HOOVER KACYON, LLC
527 PORTAGE TRAIL
CUYAHOGA FALLS, OH 44221

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

WYMAN STRACHAN, ET AL, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2050 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WYMAN STRACHAN, ET AL
Represented by:
DAVID DIFIORE
ATTORNEY
405 ROTHROCK ROAD
SUITE 103
AKRON, OH 44321

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

COPLEY-FAIRLAWN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the

county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOSEPH GAMBINO, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1847
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOSEPH GAMBINO
OWNER
14845 HOOK HOLLOW ROAD
NOVELTY, OH 44072

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued by the Cuyahoga County Board of Revision ("BOR"). Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On September 16, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The record does not demonstrate that the BOR issued a decision in this matter.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an

appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PAUL SHUMAKER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1777
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - PAUL SHUMAKER
Represented by:
PAUL SHUMAKER
37135 LAKESHORE
EASTLAKE, OH 44095

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was untimely filed with this board and not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the

Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record demonstrates that appellant filed the notice of appeal with this board thirty-one days after the mailing of the BOR's decision. The record further demonstrates that appellant failed to file notice of the appeal with the BOR. As such, appellant has failed to comply with the statutory requirement to file notice of the appeal with this board and with the BOR within thirty days of the mailing of the BOR's decision.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOSEPH MCMAHON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1290
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - JOSEPH MCMAHON
OWNER
3433 W. 95TH STREET
CLEVELAND, OH 44102

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, December 11, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter as duplicative of BTA No. 2019-1231, which this board dismissed for lack of jurisdiction on September 10, 2019. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

A review of the record indicates this matter is duplicative of BTA No. 2019-1231. Further review demonstrates that the notices of appeal were filed with this board and with the BOR thirty-one days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PAWAN MANGLA, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1360
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PAWAN MANGLA
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board, and not filed at all with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope*

v. Highland Cty. Bd. of Revision, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of appeal was filed with this board thirty-three days after the mailing of the BOR's decision. Futher, the record does not demonstrate that appellant filed notice of the appeal with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOHN C. RAMM, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1293
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOHN C. RAMM
OWNER
3512 CLAGUE ROAD
NORTH OLMSTED, OH 44070

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 12, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.),	)	
	)	CASE NO(S).
Appellant(s),	)	2019-1028, 2019-1020, 2019-1024,
	)	2019-1025
vs.	)	
	)	
MONTGOMERY COUNTY	)	(REAL PROPERTY TAX)
BOARD OF REVISION, (et. al.),	)	
	)	ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, December 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the

BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR in any of these appeals. Upon consideration of the existing records, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

BUFFINGTON LORI A TR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1019
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BUFFINGTON LORI A TR
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, December 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LAUB MICHAEL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1027
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - LAUB MICHAEL
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, December 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

COLEMAN III BRUCE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1026
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - COLEMAN III BRUCE
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, December 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MM RETIREMENT PROPERTIES LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1022, 2019-1023 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MM RETIREMENT PROPERTIES LLC
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, December 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notices with the BOR. Upon consideration of the existing record, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

SUSAN DIPALMA TRUSTEE, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1245 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUSAN DIPALMA TRUSTEE
Represented by:
SUSAN DIPALMA
9639 CREAWOOD FRST
WAITE HILL, OH 44094

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Tuesday, December 17, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the filing of a motion to dismiss filed by the county appellees. By way of the motion, the county appellees assert that the property owner failed to file a copy of the notice of appeal with the board of revision ("BOR") as required by R.C. 5717.01. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified consistent with R.C. 5717.01, and county appellees' motion to dismiss and property owner's response.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and* the board of revision within

thirty days after notice of the decision of the county board of revision is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Here, the property owner advanced five arguments in opposition to the motion to dismiss. First, she argued that the BOR did not provide her with notice that it changed the subject property's value for tax year 2018. It appears that the property owner fails to understand the county real property valuation process. Here, *the county auditor, not the BOR*, changed the subject property's value in the fulfillment of a statutory duty to reappraise real property values once every six years and perform an update at the three-year interim period. R.C. 5713.01, 5713.03, 5715.33, 5715.24; *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468; Ohio Admin. Code 5703-25-16(B). Compare R.C. 5715.12 (requires a board of revision to provide a property owner with notice of its decision to increase the value of property). As a result, we must reject this argument.

Second, the property owner agued that the notice of appeal was filed using this board's electronic system and that she believed "that the electronic system would send the proper notices." Property Owner's Brief in Opposition at 3. We note that, "upon submitting an online

filing of the notice of appeal, a window pops up as an 'Important Reminder of Service Requirement' stating 'You are [required] to serve (send a copy of) the Notice of Appeal you just created to all other parties of this appeal. **Failure to do so may result in a dismissal of your appeal**.'" (Emphasis in original.) *Lyndhurst v. Testa*, 8th Dist. Cuyahoga No. 107083, 2018-Ohio-5239, at ¶7. As a result, we must reject this argument.

Third, the property owner argued that the BOR failed to instruct her about the necessary steps to perfect an appeal with this board. Unfortunately, the property owner decided to procced in a pro se capacity and risked the possibility that she may not have had a complete understanding of the appeal process. However, her election to proceed pro se does not relieve her of the responsibilities imposed upon her. See, e.g., *Phelps v. Ohio Atty. Gen.*, 10th Dist. Franklin No. 06AP-751, 2007-Ohio-14, at ¶8 ("We recognize that appellants are acting pro se. Nevertheless, a pro se litigant 'is held to the same rules, procedures and standards as those litigants represented by counsel and must accept the results of her own mistakes and errors.'"). As a result, we must reject this argument.

Fourth, the property owner argued that the BOR knew that she intended to file an appeal of its decision, based upon the discussion at the BOR hearing, and learned that an appeal had indeed been filed from this board's docketing letter. Oral statements about a party's intent to file a notice of appeal are not considered a "filing" for purposes of R.C. 5717.01. *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746, at ¶12 (" * * * the Rosses contend that their attorney's oral comments and written submission provided at the BOR's October 2016 meeting 'substantially complied with R.C. 5717.01' and were 'sufficient to invoke the jurisdiction of the BTA.' We disagree. R.C. 5717.01 requires the 'filing' of a 'notice of appeal.' Counsel satisfied neither of these requirements by speaking and submitting a written

comment at the BOR meeting."). Moreover, the Supreme Court of Ohio has considered and rejected the argument that this board's docketing letters relieve an appellant from the duty to file a copy of the notice of appeal with a board of revision. In doing so, the court noted that "the BTA has no statutory duty to inform a board of revision that an appeal has been filed. The statute burdens appellants with this duty. Appellants may not substitute the BTA's voluntary deeds for their required acts." *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192, 194 (1989). As a result, we must reject this argument.

Fifth, the property owner argued that this matter should not be dismissed based upon a technicality because the law favors resolving cases on their merits. As noted above, the requirements of R.C. 5717.01 are specific and mandatory, not a "technicality," and must be followed in order to invoke this boards jurisdiction. *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). Accord *Ross*, supra at ¶10 ("Because these duties run to 'the core of procedural efficiency,' the filing of a notice of appeal with the board of revision is essential to perfecting an appeal. *Akron Std. Div. of Eagle-Picher Industries, Inc. v. Lindley*, 11 Ohio St.3d 10, * * * (1984)."). This board, as a creature of statute, has only the jurisdiction, power and duties expressly given by the General Assembly. *Steward v. Evatt*, 143 Ohio St. 547 (1944); *Leiphart Lincoln-Mercury, Inc. v. Bowers*, 107 Ohio App. 259 (1958). As a result, we must reject this argument.

Nevertheless, we note that even if we had had jurisdiction to consider the merits of this appeal, we would not have found in favor of the property owner. See *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of

property have different values without more does not establish that the tax authorities valued the properties in a different manner."); *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales).

Based upon the foregoing, we must conclude that this board lacks jurisdiction to consider the merits of this matter. As such, we grant the county appellees' motion and dismiss this appeal.

OHIO BOARD OF TAX APPEALS

PJ LEGACY, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2125
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PJ LEGACY, LLC
Represented by:
SHAINE WARD
PJ SUPERIOR PROPERTIES, LLC
P.O. BOX 670801
NORTHFIELD, OH 44067

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Wednesday, December 18, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss for appellant's failure to timely file notice of the appeal with the Summit County Board of Revision ("BOR") as is required by R.C. 5717.01. We decide the matter upon the motion, the notice of appeal filed with this board, and the statutory transcript. While we note a response to the motion was filed by Shaine E. Ward as "authorized representative/Officer for [appellant/owner] PJ Legacy, LLC," there is no indication Mr. Ward is an attorney; therefore, the filing constitutes the unauthorized practice of law and is hereby stricken. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶18, fn.2 ("[A] non-attorney who prepares

legal papers to be filed in court on behalf of a corporate entity such as a limited liability company engages in the unauthorized practice of law."); Ohio Adm. Code 5717-1-02(B) ("Any non-attorney acting on behalf of a party may not make legal argument, examine witnesses, or undertake any other tasks that can be performed only by an attorney.").

R.C. 5717.01 provides that an appeal to this board from a decision of a county board of revision "shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals *and with the county board of revision*." (Emphasis added.) Such notices must be filed within thirty days of the BOR's decision. Id. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). See also *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746; *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000).

The record demonstrates that notice of the BOR's decision was mailed on September 9, 2019. While appellant timely filed an appeal with this board on October 4, 2019, the statutory transcript and the affidavit attached the county's motion to dismiss indicate the BOR did not receive notice of the appeal. The documentary evidence attached to the response filed on behalf of the appellant does not contradict such statements. Indeed, the only proof of mailing provided bears a date of October 24, 2019, i.e., more than thirty days after the mailing of the BOR's decision. Appellant bears the burden to demonstrate it has properly invoked this board's jurisdiction. It has not done so.

Accordingly, the county appellees' motion is well taken. This matter was not filed in compliance with the requirements of R.C. 5717.01, and, as such, must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MESFIN G. ZEWDIE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2162
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - MESFIN G. ZEWDIE
682 BLOSSOM LN.
PICKERINGTON, OH 43147

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of

appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The county appellees attached to their motion the affidavit of the clerk to the BOR, which asserts that appellant's notice of appeal was not filed with the Franklin County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DAVID L WRIGHT, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1524
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - DAVID L WRIGHT
Represented by:
EDWARD KARBAN
33727 CENTER RD
VALLEY CITY, OH 44280

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

[2] R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and thecommon pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

[3] The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LINDA R. HARRIS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1403
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LINDA R. HARRIS
OWNER
15551 QUARRY ROAD
OBERLIN, OH 44074

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

OBERLIN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ABRAHAM LIEBERMAN
O'TOOLE, MCLAUGHLIN, DOOLEY & PECORA CO., LPA
5455 DETROIT ROAD
SHEFFIELD VILLAGE, OH 44054

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days*

after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GIRISHWAR SHARMA & MEENU SHARMA, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1346 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GIRISHWAR SHARMA & MEENU SHARMA
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revisionprovided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CARL D & GINA M WOOD, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1342 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CARL D & GINA M WOOD
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NINETY NINE PROPERTIES LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1339 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NINETY NINE PROPERTIES LLC
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GIRISHWAR SHARMA & ARMANDEEP SOHAL, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-1337 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GIRISHWAR SHARMA & ARMANDEEP SOHAL
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THE TRISTER MARKETING GROUP, INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1127 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE TRISTER MARKETING GROUP, INC
Represented by:
ARYEH I. DORI
ATTORNEY AT LAW
P. O. BOX 18075
CLEVELAND HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BUFFINGTON LORI A TR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1032
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BUFFINGTON LORI A TR
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Thursday, December 19, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GCR RETAIL LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2298
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GCR RETAIL LLC
Represented by:
JAYNUL DEWANI
MANAGING MEMBER
6618 WESTON CIR E
DUBLIN, OH 43016

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

GAHANNA-JEFFERSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, December 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board and not filed at all with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of appeal was filed with this board forty-three days after the mailing of the BOR's decision. The record does not demonstrate that appellant filed such notice with the BOR. The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notice of appeal was not filed with the Franklin County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BRADLEY R SCHWAB, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1609
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - BRADLEY R SCHWAB
Represented by:
BRADLEY SCHWAB
412 SASSAFRAS DR.
4546 LIBERTY AVE.
VERMILION, OH 44089

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Friday, December 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board or the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the

BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of appeal was filed with this board thirty-one days after the mailing of the BOR's decision and was filed with the BOR forty-one days after. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CRAIG WARNER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1507
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CRAIG WARNER
SRWARN PROPERTY LLC
1318 W 95TH
CLEVELAND, OH 44102

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, December 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

EDWARD R JOINER JR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1492
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - EDWARD R JOINER JR
Represented by:
EDWARD JOINER
353 BIRCH BROOK CT.
DAYTON, OH 45458

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

TROTWOOD MADISON CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
MICHAEL W. SANDNER
PICKREL, SCHAEFFER & EBELING
2700 STRATACACHE TOWER - 27TH FLOOR
40 N. MAIN STREET
DAYTON, OH 45423

Entered Friday, December 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the responses thereto, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a

county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARY ANN ROBERTS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1243
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LUCAS COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - MARY ANN ROBERTS
5520 BRIXTON DR.
SYLVANIA, OH 43560

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
ELAINE B. SZUCH
ASSISTANT PROSECUTING ATTORNEY
LUCAS COUNTY
711 ADAMS, SUITE 250
TOLEDO, OH 43604

Entered Friday, December 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter as premature. The motion alleges that, although appellant appears to seek review of a decision related to remission of a real property tax late payment penalty, appellant never filed an application for such remission with the Lucas County Board of Revision ("BOR"). Appellant did not respond to the motion.

Remission of real property tax late payment penalties is governed by R.C. 5715.39, which provides criteria pursuant to which the county auditor and county board of revision may grant applications for remission. Once the county board of revision renders a decision on an application, its decision may be appealed to this board under R.C. 5717.01. Here, there is no indication any decision has been rendered by the BOR on appellant's application. Indeed, the application submitted to this board does not indicate that it was ever filed with the Lucas County

Treasurer or the Lucas County Auditor. It therefore appears this appeal is premature.

R.C. 5703.02 and 5717.01 grant this board the authority to hear and determine appeals from *decisions* of county boards of revision. Notice of such an appeal must be filed with this board within thirty days of the board of revision's decision. R.C. 5717.01. "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147 (1946). See also *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 63 (1990).

Upon review of the notice of appeal and the motion, we find this matter is premature. Accordingly, the motion is well taken and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1090, 2019-1081, 2019-1083, 2019-1084, 2019-1086, 2019-1087, 2019-1088, 2019-1089 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Friday, December 20, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motionS, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notices with the BOR. Upon consideration of the existing records, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

GARY W RAMSEY & BOBBIE SIMMERMAN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-512 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GARY W RAMSEY & BOBBIE SIMMERMAN
Represented by:
GARY RAMSEY
OWNER
12700 LAKE AVE #3004
LAKEWOOD, OH 44107

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The taxpayers appeal a decision of the board of revision ("BOR"), which denied their request for remission of the late payment penalty associated with the property tax bill for parcel 301-17-046 for the first half of tax year 2018. We proceed to consider this matter based upon the underlying application, statutory transcript certified pursuant to R.C. 5717.01, and written argument submitted by the taxpayers.

[2] The taxpayers applied for remission of the late payment penalty for the previously mentioned tax period. By way of the application, they alleged that their failure to timely pay the property tax bill was based upon reasonable cause, i.e., because the treasurer did not send the

property tax bill until January 15, 2019 and because they did not receive such bill until February 9, 2019, after its due date. The treasurer recommended that the application be denied because of the taxpayers' prior history of late payment, specifically the second half of tax year 2016. The BOR accepted the treasurer's recommendation and denied the taxpayers' application for remission of the late payment penalty. This appeal ensued.

[3] Neither the taxpayers nor the county appellees availed themselves of the opportunity to submit evidence into the record at a hearing before this board. The taxpayers submitted additional information while this matter was pending, which included written argument and evidence and factual assertions that are not in the record. We will consider their written argument, asserting that the late payment penalty should be remitted because of their prior history of timely payments; however, we will not consider the evidence and factual assertions that were not submitted in the official record at a hearing before the BOR or before this board. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[4] On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission of the real property tax late payment penalty. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

[5] Upon review, we find that the taxpayers have failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late payment penalties shall be remitted. The taxpayers alleged that their situation fit within the parameters of under R.C. 5715.39(C), which provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA

No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that the taxpayers had at least one prior late payment of property tax bills, i.e., the payment for the second half of tax year 2016. Furthermore, R.C. 323.13 provides, in relevant part, that "[f]ailure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." As such, we find that the taxpayers do not qualify for remission of the late payment penalties under R.C. 5715.39(C).

[6] To the extent that the taxpayers argued that they are entitled to remission of the late payment penalty out of a sense of fairness, given their prior history of timely paying property tax bills, we lack authority to grant remission on that basis. As an administrative agency whose authority is strictly provided for in statute, this board is without equitable jurisdiction.*Columbus S. Lumber Co. v. Peck,* 159 Ohio St. 564 (1953).

[7] Based upon the foregoing, we find that the taxpayers have failed to satisfy their burden on appeal. As such, we deny their request for remission of the late payment penalty for the property tax bill for the first half of tax year 2018.

OHIO BOARD OF TAX APPEALS

NANCY MCLAUGHLIN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-433
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NANCY MCLAUGHLIN
Represented by:
NANCY C. MCLAUGHLIN
OWNER
12231 DEBBY DR.
PARMA, OH 44130

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered following this board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. As indicated in our earlier order, it appears that the appellant may not have followed the procedures to properly challenge the issue raised in the notice of appeal, i.e., related to delinquent property taxes for parcel 457-12-031, or otherwise appealed from a decision of the board of revision. Appellant did not respond to our order.

R.C. 5703.02 grants this board the authority to hear and determine appeals from decisions of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the board of tax appeals within thirty days after *notice of the decision of the county board of*

revision is mailed as provided in division (A) of section 5715.20 of the Revised Code."

(Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that she followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by the board of revision from which this appeal could be taken. Accordingly, the appellant has failed to invoke this board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

ERNEST SMITH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2602
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ERNEST SMITH
7242 LYNBROOK DR
OAKWOOD, OH 44146

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of

appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant's notice of appeal was filed with this board thirty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

RONNA K CASTELLUCCIO, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2448 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RONNA K CASTELLUCCIO
Represented by:
RONNA K. CASTELLUCCIO
4340 ASHLAND AVENUE
CINCINNATI , OH 45212

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it untimely filed with this board and with the county board of revision. This matter is decided upon the motion, appellant's response, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that a notice of appeal was filed with this board and with the BOR nearly two months after the mailing of the BOR's decision. Appellant's response but did not provide documentation to demonstrate that the appeal was timely filed. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DAVID POOLE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-610
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - DAVID POOLE
597 GARDEN RD.
COLUMBUS , OH 43214

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] David Poole appeals from a decision of the Franklin County Board of Revision ("BOR") denying applications for penalty remission for the second half of 2017 and the first half of 2018. No hearing was requested, and no party filed written argument. We decide the case on the notice of appeal and the statutory transcript.

[2] Remission of late payment penalties is governed by R.C. 5715.39. That statute requires penalty remission for the following reasons:

> (1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.

(2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

(3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

(4) The taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(5) With respect to the first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer.

Penalty remission is also required when the "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

[3] Appellant satisfied a mortgage at some point in 2017 and argues he did not receive a bill for either half of 2017 or the first half of 2018. He requested the bills on March 11, 2019, and he signed a comprehensive payment plan on March 15, 2019. After, he filed a penalty remission application for the three missed tax bills. Remission was granted for the first half of 2017 but denied for the second half of 2017 and the first half of 2018.

[4] Having reviewed the facts, we find appellant does not qualify for additional remission under R.C. 5715.39 because the facts of this case do not match any of the scenarios contained in that statute. R.C. 5715.39(B)(5) is directly on point. It requires penalty remission for the "first payment due after a taxpayer fully satisfies a mortgage" but "the mortgagee failed to notify the treasurer of the satisfaction of the mortgage." Accordingly, remission was correctly granted for the first half of 2017, i.e., the fist payment due after appellant satisfied the mortgage. However, that provision does not apply to later tax bills, i.e., the second half of 2017 and the first half of 2018.

[5] We also find no other provision in R.C. 5715.39 applies. There is no indication in record that appellant notified the treasurer that the mortgage was satisfied or that the bill should be sent to appellant's mailing address. See R.C. 323.13 (stating a taxpayer has a duty to update his or her mailing address with the treasurer in writing). Appellant does not allege he timely requested a bill or timely placed payment in the mail. Appellant also does not allege timely payment was not made due to illness or hospitalization. We likewise do not find the failure to timely pay was due to reasonable cause given the fact that appellant missed multiple payments.

[6] For these reasons, we deny penalty remission for the second half of 2017 and the first half of 2018.

OHIO BOARD OF TAX APPEALS

R.E.L. LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-453 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - R.E.L. LIMITED PARTNERSHIP
Represented by:
ROBERT ZAMES
10556 CLEARLAKE DR
PAINESVILLE, OH 44077

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

R.E.L. Limited Partnership ("REL") appeals from four decisions of the Lake County Board of Revision ("BOR") retaining the auditor's value of four parcels for tax year 2018. The parties waived their appearances at this board's hearing. We now decide the case on the notice of appeal, the statutory transcript, and the supplemental transcript.

The auditor valued each of the four subject parcels at $37,730 for tax year 2018. REL filed a decrease complaint requesting each parcel be valued at $25,200. Counsel appeared for REL at the BOR hearing, but no witnesses with actual knowledge were called. Counsel presented unadjusted sales data; however, the BOR ultimately retained the auditor's values. We

note the record contains an adjustment grid, which appears to have been created and considered by the BOR. That grid suggests REL's comparables, as adjusted, support the auditor's value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12. The best evidence of value is a recent, arm's-length sale, but no party advocates for a sale price in this case. Therefore, we move on to the evidence REL provided to the BOR.

Upon review, we find REL has not carried its burden. REL failed to call any party with actual knowledge of the subject property, the comparables, or the market generally. Statements of counsel do not constitute evidence upon which this board may rely. *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). Moreover, there is no evidence counsel had actual knowledge of the subject property, the comparables he presented, or the market generally. Accordingly, this board finds his statements about the comparable sales to be unreliable hearsay. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620. Moreover, raw sales data is generally insufficient to justify a reduction in value. Having provided no additional competent and probative evidence of value, we find REL has not carried its burden.

For these reasons, this board finds the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL NUMBER 15-D-001-A-00-005-0

TRUE VALUE

$37,730

TAXABLE VALUE

$13,210

PARCEL NUMBER 15-D-001-A-00-006-0

TRUE VALUE

$37,730

TAXABLE VALUE

$13,210

PARCEL NUMBER 15-D-001-A-00-007-0

TRUE VALUE

$37,730

TAXABLE VALUE

$13,210

PARCEL NUMBER 15-D-001-A-00-008-0

TRUE VALUE

$37,730

TAXABLE VALUE

$13,210

OHIO BOARD OF TAX APPEALS

VIRANI NAZIMUDDIN AND DIANE, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-357 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VIRANI NAZIMUDDIN AND DIANE
Represented by:
NAZIMUDDIN VIRANI
7136 CLOISTER ROAD
TOLEDO, OH 43617

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
ELAINE B. SZUCH
ASSISTANT PROSECUTING ATTORNEY
LUCAS COUNTY
711 ADAMS, SUITE 250
TOLEDO, OH 43604

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 79-02834, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, record certified pursuant to R.C. 5717.01, and property owners' written argument submitted to the BOR.

[2] The property owners filed a complaint with the BOR, which requested that the subject property's value be reduced from its initially assessed value of $232,500 to $210,000. They alleged that a comparative analysis of recent sales, compiled by ReMax real estate agency, demonstrated that the subject property had been overvalued. Based upon the statutory transcript, it appears that the BOR scheduled the matter for a merit hearing and that the property owners

waived their appearance at such hearing. Instead, they relied upon the average annual increase in real property values, purported to be from ReMax, and a list of raw sales data. At the BOR decision hearing, the BOR members noted that the property owners' list of raw sales data failed to include recent sales of properties that sold for higher prices, which supported the subject property's initial value. As such, the BOR voted to maintain the subject property's $232,500 value and this appeal ensued. Neither the property owners nor the county appellees opted to submit additional evidence at a hearing before this board. However, we note that the property owners submitted written argument to the BOR, which asserted that the subject property's initial value was out of line with the real estate market and was inconsistent with the subject property's proposed value. See Statutory Transcript at Exhibit J. We will, therefore, make a decision based upon the arguments and evidence submitted to the BOR.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This boardmust rev iew the record to independently determine real property value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485,at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

[4] Upon review of the record, we must conclude that the property owners failed to provide competent, credible, and probative evidence. It appears that they argue that the subject property should be valued consistent with a value, $210,000, that may have been determined during the informal review during the countywide reappraisal process. However, we must reject that argument. Although the record is devoid of any information about the informal review process,

the record is clear that based upon the information available, as part of the discharge of her duties, the county auditor finally valued the subject property at $232,500. See R.C. 5713.01. We must also note that the property owners failed to submit affirmative evidence to demonstrate that the subject property should be valued at $210,000.

[5] The property owners also argued that the subject property should be valued consistent with information about the real estate market purportedly from ReMax. We must also reject this argument. We note that no one from ReMax testified at a hearing before the BOR or before this board. As a result, the record is devoid of any information about how ReMax arrived at its conclusion that real property values in the county only increased by 13.07% over a three-year period. Even if we ignore that no one affiliated with ReMax testified at a hearing, this board typically has rejected opinions from realtors because, while they may have extensive training in their field and develop some appraisal expertise, as a group, real estate sales people "typically do not consider all the factors that professional appraisers do." *Poenisch v. Franklin Cty. Bd. of Revision* (Jan. 23, 2015), BTA No. 2014-961, unreported, citing The Appraisal of Real Estate (13th Ed.2008) at 8-9.

[6] The property owners further argued that raw sales data indicated that the subject property's value should be reduced. We have repeatedly held that information of this type is an insufficient basis to determine real property value because it fails to adequately to consider and to account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. For example, the homes of the alleged comparable sales range from 2062 square feet to 3554 square feet. No adjustments were made for square footage and, clearly, not for any other differences in the properties, i.e., condition, condition, number of bedrooms, and basement. See also *Carr v. Cuyahoga Cty. Fiscal Officer*,

8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."); *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

[7] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owners failed to satisfy the evidentiary burden before the BOR and before this board. We conclude, therefore, that the subject property's value shall remain as initially assessed.

[8] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2018:

Parcel No. 79-02834

True Value: $232,500

Taxable Value: $81,380

OHIO BOARD OF TAX APPEALS

SOLON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2174 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SOLON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BAINBRIDGE PARK, LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 23, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the Solon City Schools Board of Education's ("BOE") appeal from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 951-31-006 for tax year 2017. All parties waived their appearances at a hearing before this board. We therefore proceed to decide the matter upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The subject property is an office/flex building. For tax year 2017, the fiscal officer valued the property at $2,968,300. Property owner Bainbridge Park, LLC filed a complaint seeking a decrease in value; the BOE filed a countercomplaint seeking to maintain the fiscal officer's value. In support of its request for a decrease, Bainbridge Park, LLC presented testimony from one of its owners, and the appraisal report and testimony of Richard G. Racek, Jr., who opined the value of the property as of January 1, 2016, was $1,700,000, using the sales comparison and income capitalization approaches to value. The BOE cross-examined the owner's witnesses, but presented no independent evidence of value. After considering the evidence presented, the BOR accepted Mr. Racek's opinion of value and decreased the value of the property to $1,700,000.

The BOE appealed to this board. Although it requested a hearing, it waived its appearance and presented no written argument. The appellees likewise waived their appearances and did not provide any written argument.

When the BOE appeals to this board from a decision of a BOR reducing value based on an owner's appraisal evidence, the so called "*Bedford* rule" applies. Under the *Bedford* rule, the BOR's "reduced valuation is the new default valuation of the property, and the burden lies on the board of education to prove a new value (be that the [fiscal officer's] valuation or some other value)." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶7. Here, the BOE has presented no new evidence of value, nor has it made any argument that the appraisal evidence relied upon by the BOR was legally incorrect or was not "competent and at least minimally plausible." Id. at ¶7. We therefore must conclude that the BOE has failed to meet its burden on appeal.

Accordingly, it is the order of this board that the true and taxable values of the subject

property as of January 1, 2017, were as follows:

TRUE VALUE

$1,700,000

TAXABLE VALUE

$595,000

OHIO BOARD OF TAX APPEALS

MARILYN M. SCHUMICK, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-619 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARILYN M. SCHUMICK
8149 CROSSGATE CT. N.
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Marilyn Schumick appeals from a decision of the Franklin County Board of Revision ("BOR") denying an application for penalty remission for the first half of 2018. We decide the case on the notice of appeal and the statutory transcript.

[2] Remission of late payment penalties is governed by R.C. 5715.39. That statute requires penalty remission for the following reasons:

> (1) The taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as

provided in division (B)(5) of this section, the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax.

(3) The tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax.

(4) The taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax.

(5) With respect to the first payment due after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer.

Penalty remission is also required when the "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

[3] Ms. Schumick's tax bill for the first half of 2018 was due January 22, 2019. In her remission application, she states she did not timely pay the bill because she was caring for the needs of her hospitalized brother. She included a funeral program indicating her brother died on March 31, 2019. Ms. Schumick paid the bill shortly thereafter. The treasurer recommended remission be granted. However, the auditor recommended denial, and the BOR ultimately denied remission.

[4] Upon review, this board finds Ms. Schumick has shown her failure to timely pay the bill was due to reasonable cause and not willful neglect. While the BOR denied remission because

of Ms. Schumick's history of missed payments, the record shows Ms. Schumick only had one other late payment. That payment was four days late and due to the death of her husband, who was responsible for paying the tax. See R.C. 5715.39(B)(3) (discussing penalty remission when payment is late due to death of a taxpayer).

[5] For these reasons, the BOR's decision is reversed. We remand this case to the BOR with instructions to grant remission for the first half of 2018.

OHIO BOARD OF TAX APPEALS

WILLIAM TOMLINSON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-606, 2019-607
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - WILLIAM TOMLINSON
P.O. BOX 229
NEWBURY, OH 44065

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, William Tomlinson, appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 134-21-066 and 546-23-002, for tax year 2018. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and Tomlinson's written argument.

[2] The subject properties are each improved with a single-family home, and the fiscal officer initially assessed their total true values at $35,000 and $50,500, respectively. Tomlinson filed complaints with the BOR seeking decreases in value to $14,000 and $22,000, respectively. The BOR convened a hearing, at which Tomlinson presented evidence about his purchase of each property, and testified about any work done to the houses after the sale and their rental

history. The BOR issued decisions maintaining the fiscal officer's value of parcel number 134-21-066 and reducing the value of parcel number 546-23-002 to $43,600. From these decisions, Tomlinson filed the present appeals seeking reduction based on his purchases. The parties waived the opportunity to appear before this board to present additional evidence.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[4] In the present appeal, it is undisputed that parcel number 134-21-066 transferred from Mountainside Realty Ventures on January 17, 2017 for $12,000. The BOR indicated that it did not accept the sale based on changes made to the property between the sale and the tax lien date. The record, however, lacks support for this outcome. We recognize that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity and may involve a number of other considerations, such as changes to the property. See, e.g., *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516,

2008-Ohio-1473, ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"). In this case, Tomlinson testified that he "spruced up" the property's interior and made cosmetic changes, such as paint, flooring, and windows. The county appellees have not demonstrated that these repairs were so significant that they changed the property to such an extent that it warranted a rejection of the sale price. Thus, we find that reported sale price provides the best evidence of the value of the subject property as of the tax lien date.

[5] The record likewise shows that Tomlinson purchased parcel number 546-23-002 from Bayview Loan Servicing LLC on April 5, 2016 for $21,000. The BOR did not cite any reason for rejection of this sale or provide any evidence that would show the sale price does not provide the best evidence of the property's value. Indeed, Tomlinson testified that the property was occupied at the time of the purchase by tenants who have remained in the home. Tomlinson stated that he had made very limited repairs to the property, such as the removal of some garbage and exterior paint. We find that the April 2016 sale price provides the best evidence of the subject property as of the tax lien date.

[6] It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2018, were as follows:

PARCEL NUMBER 134-21-066

TRUE VALUE

$12,000

TAXABLE VALUE

$4,200

PARCEL NUMBER 546-23-002

TRUE VALUE

$21,000

TAXABLE VALUE

$7,350

OHIO BOARD OF TAX APPEALS

BRITTANY GEORGALAS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-502
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
TRUMBULL COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BRITTANY GEORGALAS
OWNER
132 BENTWILLOW DR
NILES, OH 44446

For the Appellee(s) - TRUMBULL COUNTY BOARD OF REVISION
Represented by:
DENNIS WATKINS
PROSECUTING ATTORNEY
TRUMBULL COUNTY
160 HIGH STREET
WARREN, OH 44482-1092

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon an application for remission of real property late-payment penalty filed with this board by Brittany Georgalas, which this board recognized as a notice of appeal. On August 1, 2019, we ordered appellant to show cause why this matter should not be dismissed as premature, as there was no indication from the filing that the Trumbull County Board of Revision issued any decision with regard to any request for remission of a late payment penalty associated with parcel number 25-055949 for the first half of 2018. Appellant did not respond to our order. Although the Trumbull County Board of Revision was ordered to file a statutory transcript or an appropriate jurisdictional motion, it likewise failed to respond in any way.

Unfortunately, this board is now left with very little upon which to determine whether

we properly have jurisdiction over this matter. Appellant bears the burden to demonstrate that this board has jurisdiction of her request for late payment penalty remission. See *L.J. Smith, Inc. v. Harrison Cty. B.d of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶18. She has failed to present any evidence or response indicating that a decision was issued by a county board of revision from which she could properly appeal to this board under R.C. 5717.01. We therefore find this board lacks jurisdiction over this matter.

Based upon the foregoing, this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

GST PROPERTY MANAGEMENT, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-172 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GST PROPERTY MANAGEMENT, LLC
Represented by:
J. ALEX MORTON
ATTORNEY AT LAW
5247 WILSON MILLS ROAD, #334
RICHMOND HTS., OH 44143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

SOUTH EUCLID-LYNDHURST CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 702-10-048, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and appellant's written argument. We note that appellant submitted an appraisal report on appeal that was not presented to the BOR or at a hearing before this board. Because the

appraisal is not properly in the record for this case, we cannot consider it in our determination. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[2] The fiscal officer initially assessed the subject's total true value at $81,300. Appellant filed a complaint with the BOR seeking a reduction in value to $50,000. The appellee board of education ("BOE") filed a countercomplaint in support of the fiscal officer's value. At the BOR hearing, appellant presented evidence that it purchased the subject property on February 2, 2018 for $57,410. The BOE did not present any independent evidence of value or challenge any aspect of the sale. The BOR commented that the property transferred via a general warranty deed, but the sale appeared to be seller-financed and no agent commissions were identified to show that the property had been listed prior to the transfer. Following the hearing, appellant submitted a written statement, including email attachments, about the circumstances of the sale, specifically that the seller was divesting itself of properties and negotiated the sale with the property manager to avoid paying commissions. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. The parties waived the opportunity to appear at a merit hearing before this board, and the appellant instead relied on written argument.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic

documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id.

[4] In the present appeal, it is undisputed that the property transferred from Delta Kappa Holdings LLC to GST Property Management LLC on February 2, 2018 for $57,410. The BOR indicated that it rejected the sale as evidence of value because the property transferred between the seller and its property manager without exposure to the market. Initially, we note that other than the sale documents themselves, the only information regarding the sale comes from the written statement (and attached emails) that were provided to the BOR after the hearing. None of the parties to the transaction appeared to present sworn testimony or respond to questions from the county or BOE, though we recognize that appellant was available, but unable, to participate at the BOR hearing by telephone. As such, we are unable to weigh the credibility of the statements and give limited weight to the information provided by appellant after the BOR hearing. Nevertheless, we find that through the presentation of the sale documents, appellant provided sufficient evidence to meet its initial burden to show that the sale occurred and benefits from the rebuttable presumption that the sale price reflects the subject's true value. We further find that the appellees failed to rebut this presumption.

[5] We find that the BOR's challenges to the reliability of the sale are without merit. A lack of exposure to the market or seller financing are not sufficient to disqualify a sale for purposes of tax valuation. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶29 ("The case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers."); *Columbus Bd. of Edn. v. Fountain Square Assocs., Ltd.*, 9 Ohio St.3d 218, 220 (1984) ("The fact that appellee obtained favorable financing does not render the sales price unrepresentative of true value."). Additionally,

even if we consider the written statement about the circumstances of the sale, we find that the sale was arm's-length. According to the statements, appellant was acting as the property manager for the seller when it decided to divest itself of properties in the area. In an effort to avoid fees associated with listing the property, the parties negotiated a sale among themselves. There is nothing about the circumstances of this sale that demonstrates the parties were related in a sense that they did not both act in their own best interest. See *Terraza*, supra, at ¶ 9, quoting *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964). Accordingly, we find that the sale was arm's-length and provides the best indication of the true value of the subject property.

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$57,410

TAXABLE VALUE

$20,090

OHIO BOARD OF TAX APPEALS

GREG NELSEN EMBASSY BUILDERS INC., (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-701 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GREG NELSEN EMBASSY BUILDERS INC.
Represented by:
GREG NELSEN
1127 15TH ST., NW.
CANTON, OH 44703

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Greg Nelsen Embassy Builders, Inc. ("Nelsen"), appeals from a decision of the Lorain County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2018. Nelson requested a hearing with this board but later waived its appearance. Accordingly, we decide the case on the notice of appeal and the statutory transcript. Nelsen attached numerous documents and pictures to his notice of appeal; however, because Nelsen did not present those documents and pictures at a hearing before this board, we will not consider those documents. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[2] The subject property is a residence, which the auditor valued at $65,780 for tax year

2018. Nelsen filed a decrease complaint requesting a value of $25,000 citing termite damage. At the BOR hearing, Nelsen's owner presented a settlement statement showing Nelsen purchased the property for $22,000 in July 2012. Nelsen's president also testified about the termite damage. The BOR retained the auditor's value "[b]ased on insufficient evidence to change value." BOR, Ex. E.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. Neither the auditor nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. Nelsen presented evidence of a 2012 sale at the BOR hearing. However, that sale is not recent to the 2018 tax-lien date. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92,2014-Ohio-1588. This board notes Nelsen has not supplied evidence to show the sale price continues "to be a reliable indication of value despite the passage of time." *Gallick v. FranklinCty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. Accordingly, we move on to Nelsen's other evidence of value.

[5] While an owner is competent to opine on their property's value, this board need not adopt that opinion of value unless probative evidence supports it. *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500 (1997). Here, Nelsen has not presented probative evidence to support its opinion of value. While the presence of termites or other negative characteristics may conceivably affect a property's value, a party must go further to show the specific impact on value. Dollar-for-dollar costs do not necessarily correlate to value. *Gallick*, supra (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). Nelsen neither had the property appraised nor presented probative evidence to show the exact effect the termites had on the property's value.

[6] For these reasons, this board decides that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL 02-01-005-118-011

TRUE VALUE

$65,780

TAXABLE VALUE

$23,020

OHIO BOARD OF TAX APPEALS

ROBERT JACOPS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-325
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - ROBERT JACOPS
9 DAISY LANE
PEPPER PIKE, OH 44124

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 735-18-013, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is improved with a two-family home, and the fiscal officer initially assessed its total true value at $110,000. Appellant filed a complaint with the BOR seeking a reduction in value to $25,450. Appellant appeared before the BOR and indicated he would accept a value of $28,000, arguing that the fiscal officer had improperly adjusted the value of the property midway through the interim period. Appellant maintained that the fiscal officer determined the value of the property was $28,100 for tax year 2015, which was an update year

for Cuyahoga County. The fiscal officer then increased the value of the property for 2016, and appellant filed a complaint that ultimately resulted in a decision from this board retaining the adjusted value. The fiscal officer again changed the value for 2017, and appellant argued that it was improper and the 2015 value should be reinstated. Appellant further claimed that he had listed the property with an agent at the 2017 assessed value (plus $2,500 per unit for appliances and 6% for seller's agent fees) but was unable to sell the property. Appellant also asserted that no income was generated by the subject property in 2017 and that none of the violations present in 2015 had been fixed by January 1, 2017. Appellant also challenged the methodology utilized during the county's valuation.

[3] The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. This board convened a hearing, at which appellant reiterated those arguments made to the BOR and again challenged the fiscal officer's authority to change the value three times within a single interim period. The county appellees maintained that the fiscal officer was authorized to adjust the subject property's value for tax year 2017 and asserted that appellant failed to meet his burden to establish an alternative value. The county appellees cited to this board's decision for tax year 2016 as support for their position.

[4] At the outset, we reject appellant's argument that the 2015 value must be reinstated. The court has described the auditor's duties to value and assess taxes against real property in the county, including the obligation to reappraise property values once every six years and perform an update at the three-year interim point. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). R.C. 5713.01(B) also directs an auditor to "'revalue and assess at any time all or any part of the real estate in such county *** where the auditor finds that the true or taxable values thereof have changed.'" *AERC Saw Mill*, supra, at ¶19. The court

explained that "[t]his duty might be triggered by an arm's-length sale" or "the reporting of an improvement or casualty to the property," for example. Id. The court affirmed that "[t]ypically, the auditor does carry over the value from the first year of a triennium to the next year, unless some event that triggers a need to change the valuation." Id. at ¶32.

[5] More simply, the general rule is that an auditor, or in this case the fiscal officer, is required to perform the countywide reappraisal every six years, an update at the three-year point, and to revalue a property or properties any time the auditor (or fiscal officer) finds the value has changed. Generally, the value will carry forward from the first year of each three-year period until the next, unless the auditor's duty to value within the triennial is triggered by some event. Because an auditor is presumed to have acted consistent with Ohio law, it is not a high bar to show that he or she has properly exercised his or her authority to adjust values mid-triennial. Nevertheless, while an auditor does not need to defend the new values when he or she determines that a property's value has changed, an auditor must first make that determination and cannot simply change the values arbitrarily for no reason without first making the determination that its value had changed. See *Johnson v. Greene Cty. Bd. of Revision* (Apr. 3, 2018), BTA No. 2017-945, unreported.

[6] In the tax year 2016 appeal, this board addressed appellant's argument and found that the record established that the fiscal officer was authorized to adjust the value based on notations to the property record card regarding an inspection of the subject property. *Jacops v. Cuyahoga Cty. Bd. of Revision* (Feb. 27, 2018), BTA No. 2017-1002, unreported. Likewise, in this case, the property record card demonstrates that rehabilitation to the property was complete on January 1, 2017 and the fiscal officer increased the subject's value to reflect the completion. While we acknowledge appellant's insistence that no significant renovations had been made to the property, he acknowledged that a representative from the office of the fiscal officer had visited the property,

which resulted in the increase to the subject's value. Without addressing the methodology or basis for the adjustment, we find that the fiscal officer's determination that some adjustment was necessary was proper. Thus, we deny appellant's claim that the 2015 values must be reinstated. We likewise reject appellant's contention that the bar against filing multiple complaints within a triennium is relevant to the present appeal because we find that the complaint was jurisdictionally valid and the R.C. 5715.19(A)(2) prohibition does not relate to an auditor's duty to value the property.

[7] In an appeal from a decision from a board of revision, an appellant must come forward with sufficient evidence not merely to show that the auditor's value incorrect, but rather to establish that an alternative proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Although a recent, arm's-length sale provides the best evidence of value, a sale that is too remote from the tax lien date does not benefit from a presumption of recency and the proponent of the sale is required to present evidence to show that market conditions and the character of the property had not changed between the date of the sale and the tax lien date. Id. at ¶18, quoting *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26. In this case, appellant has not presented such evidence to show that his purchase was recent despite the passage of time, and we find that appellant's 2011 purchase is too remote from the tax lien date to establish the value of the property for tax year 2017.

[8] Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, though it may be in the form of a non-expert owner's opinion of value. *Schutz*, supra, at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*,

155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[9] In this case, appellant relied on failed attempts to sell the subject property as evidence that its value should be reduced. Although the price at which a property transfers in an arm's-length sale is presumed to establish the value for purpose of ad valorem taxation, an unaccepted offer to purchase does not constitute a sale price and, therefore, does not raise such a presumption. *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397, 400 (1997). Similarly, "a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." *Kaiser v. Franklin Cty. Aud.*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶12. Thus, the history of appellant's failed attempts to sell the subject property does not establish its value.

[10] Finally, appellant's testimony regarding a lack of income and flaws with utilizing an income multiplier to value a property do not provide a basis for this board to find value. Most importantly, the record lacks information about several key components necessary to perform the income approach, including the market income and expenses (and support for those estimates), the effective date for the data, and support for a capitalization rate. Without a market-based net operating income or capitalization rate, this board is unable to convert income (or lack thereof) into value.

[11] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*,81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evicarrdence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence."). It is therefore the order of this board that the true and

taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE	TAXABLE VALUE
$110,000	$38,500

OHIO BOARD OF TAX APPEALS

HANOVER PROPERTY GROUP, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-86 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HANOVER PROPERTY GROUP, LLC
Represented by:
BRANDON POKERSNIK
8000 TOWN CENTRE DRIVE, SUITE 400
BROADVIEW HEIGHTS, OH 44147

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

NORTH OLMSTED CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 232-25-058, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and written argument.

The board of education ("BOE") filed a complaint with the BOR, which requested that

the subject property be revalued from its initially assessed value of $570,200 to $2,200,000 to reflect the price at which it transferred in August 2017. The property owner filed a countercomplaint, which objected to the request. Instead, the property owner proposed that the subject property be revalued at $992,300.

The BOR held a hearing on the matter, at which both parties appeared through counsel. In its presentation, the BOE presented evidence to demonstrate the $2,200,000 sale of the subject property from Brymma North Olmsted, LLC to the property owner in August 2017. Based upon that evidence, the BOE requested that the subject property be revalued accordingly. In its presentation, the property owner submitted the testimony of Bob Anastasi, a member of the property owner. Anastasi testified about the facts and circumstances of the subject sale and the lease of the subject property to Starbucks Coffee Company. In support of his testimony, the property owner submitted several documents including the purchase agreement associated with the subject sale, lease agreement with Starbucks, assignment of the lease agreement to the property owner, and a document, created by the property owner, that valued the lease with Starbucks. Based upon its evidence, the property owner argued that the subject property should be valued consistent with the land value determined by the fiscal officer, $492,300, and the building value as insured by an insurance company, $500,000, for a total of $992,300. The BOE cross-examined Anastasi to gain additional insight into the subject sale, subject property, and lease with Starbucks. However, because it was unprepared to address the documents submitted by the property owner, the BOE requested an opportunity to file a merit brief after the hearing; the BOR granted the request. Subsequent to the hearing, each party submitted written argument

to assert the strength of its own case and the weaknesses of the opposing party's case. The BOR ultimately determined that the subject sale reflected the subject property's value and this appeal ensued.

None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. Instead, the property owner and BOE submitted written argument to more fully argue the merits of their respective positions.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This board must review the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

We begin our analysis with the subject sale. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527,

2017-Ohio-4415, ¶32. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

Though none of the parties dispute the salient facts of the subject sale, we are unable to conclude that it accurately reflected the subject property's value *as the subject property existed on tax lien date.* At the BOR hearing, Anastasi testified that the building was fully constructed, and Starbucks had been operating for approximately two months, when the property owner submitted its offer to purchase the subject property in August 2017. A review of the property record card indicates that "NEW STARBUCKS BUILDING 25% COMPLETE 1-1-2017 REINSPECT: 2018 [TAXBLD + 77,900]." Statutory Transcript at Property Record Card. After reviewing the BOR hearing record and all the parties' written argument, we discern that the issue of the building's level of completion on the tax lien date was unaddressed. No one with firsthand knowledge of the subject property's condition on the tax lien date testified at the BOR hearing. This is a glaring hole in the record. Because the property record card is the official record of pertinent information regarding real property, we presume that the building was, indeed, 25% complete on the tax lien date. See R.C. 5713.03 (the property record is the place where the county auditor should "record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property."). See, also Ohio Adm. Code 5703-25-09. As it is undisputed that the character of the subject property substantially changed between the tax lien and sale dates, i.e., from a 25% complete building to a 100% complete building with an operating Starbucks, we do not find subject sale to be reflective of

the subject property's value. See *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328; *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473. See, also *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390 (the court affirmed this board's decision concluding that the assessing official properly valued the property based, in large part, upon information contained in the property record card).

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the record demonstrates that the BOR erred in its decision to value the subject property consistent with its $2,200,000 sale price in August 2017. Such sale *potentially* reflected the value of a property with a 100% complete building, but not a 25% complete building on the tax lien date at issue in this matter. As a result, we must overturn the BOR's decision. Because the property record card demonstrates that the subject property's initially assessed value was, indeed, based upon the value of the 25% complete building, $77,900, in addition to land value of $492,300, we reinstate the subject property's initially assessed value of $570,200. Compare *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543 (the court determined that the properties' initially assessed values could not be reinstated because such values failed to reflect the properties' levels of completion on tax lien date).

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

True Value: $570,200

Taxable Value: $199,570

OHIO BOARD OF TAX APPEALS

ITALIAN GREEK INVESTMENTS, LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1948, 2018-1949 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ITALIAN GREEK INVESTMENTS, LLC
Represented by:
JAMES PAPAKIRK
ATTORNEY
FLAGEL & PAPAKIRK LLC
50 E-BUSINESS WAY
SUITE 410
CINCINNATI, OH 45241

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers R72 03204B0002 and N64 01403 0051, for tax year 2017. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject properties are each improved with single-family rental properties. The auditor initially assessed the subjects' total true values at $79,040 and $51,990, respectively. Appellant filed complaints with the BOR seeking reductions in value to $53,000 and $40,950,

respectively. The BOR convened a hearing, at which appellant provided evidence of its purchases of the properties along with testimony from its managing member, Deborah Fletcher, maintaining that the sale prices represent the best evidence of the value of the properties. Fletcher confirmed the details of the sales, provided rental income information for the properties, and described any minor repairs that were made after the sales. The BOR issued decisions maintaining the initially assessed valuations, indicating that it found that the sales were not reliable evidence of value because they were not arm's-length transactions. From these decisions, appellant filed the present appeals.

At the hearing before this board, appellant again relied on the sales as evidence to support its requested reductions. In addition to the sale documents provided to the BOR and testimony from Fletcher regarding the circumstances under which each was purchased, appellant referenced a decision from this board finding that the sale of parcel number N64 01403 0051 was at arm's length and provided the best indication of the value of that property.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin*

Cty. Bd. of Revision, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id.

Looking first at parcel number R72 03204B0002, appellant purchased this property from the Secretary of Housing and Urban Development ("HUD") on October 5, 2017 for $63,660. While we acknowledge that a HUD sale constitutes a foreclosure sale that is presumptively not arm's-length, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907, the court has held that this presumption is rebuttable. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. In this case, Fletcher testified that she discovered that the property was for sale when she observed a sign in the yard as she passed by the property on multiple occasions. Through real estate agents, the buyer and seller then freely negotiated the details of the transaction, as corroborated through the commissions paid on the settlement statement. In this case, we find that appellant has provided sufficient evidence to establish that the sale provides a reliable indication of value. Additionally, the county appellees have failed to provide additional evidence to show that this board should nevertheless disregard the sale, which took place recent to the tax lien date.

Next, we consider parcel number N64 01403 0051, which appellant purchased on May 23, 2016 for $40,950 from the Federal Home Loan Mortgage Corporation. In *Italian Greek Investments, LLC v. Montgomery Cty. Bd. of Revision* (July 31, 2018), BTA No. 2017-977, unreported, this board found that appellant satisfied its burden to prove that the May 2016 sale was the best evidence of its value for tax year 2016, noting that the county appellees presented no evidence to rebut the utility of the sale. We find that the same is true in this case, and there is no basis to reject the sale for tax year 2017.

Accordingly, we find that the sales were arm's-length transactions and see no reason that

appellant's purchases should not serve to establish the value of the subject property. See *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER R72 03204B0002

TRUE VALUE: $63,660

TAXABLE VALUE: $22,280

PARCEL NUMBER N64 01403 0051

TRUE VALUE: $40,950

TAXABLE VALUE: $14,330

OHIO BOARD OF TAX APPEALS

NR4C VENTURES, LTD., (et. al.),	)	
	)	CASE NO(S).
Appellant(s),	)	2018-1768, 2018-1769, 2018-1770,
	)	2018-1771
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NR4C VENTURES, LTD.
Represented by:
TIMOTHY J. WEYLS, JR.
ATTORNEY AT LAW
WEYLS PETERS + CHUPARKOFF, LLC
6505 ROCKSIDE ROAD, SUITE 105
INDEPENDENCE, OH 44131

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

NORTH ROYALTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

In these consolidated cases, NR4C Ventures, L.T.D. ("NR4C"), appeals from several decisions of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's values of the subject properties for tax year 2017. We decide the matter on the notices of appeal, the statutory transcripts, and the parties' briefs.

The subject properties consist of six parcels, all residences or vacant land. All parcels

are in the same geographic area. NR4C filed decrease complaints on each of the parcels for tax year 2017, and it presented the same general evidence on each at the BOR hearing. NR4C, through counsel and its controller, indicated NR4C intended to develop the vacant property but has been unable to do so. The controller testified to the expenses and income for the residential property. NR4C also argued a zoning change on nearby property had affected the values of the subject properties. NR4C's counsel also stated NR4C's owner formulated the opinions of value contained in the complaints. That owner did not testify, and it does not appear the owner is an appraiser. No appraisal was submitted. The appellee school board argued the owner's opinions of value were unsupported by probative evidence. The BOR retained the fiscal officer's value of each property, and NR4C appealed. The parties waived their appearances at a hearing before this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We are also required to independently review all evidence before us and render a value determination consistent with such information. *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

Upon review, this board finds NR4C has failed to carry its burden. While an owner is competent to opine on the value of the owner's property, this board need not adopt that opinion of value unless probative evidence supports the owner's opinion. *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500 (1997). NR4C has not presented probative evidence to support its opinions of value. While a zoning change to nearby property could conceivably affect the values of the subject properties, NR4C has not supplied probative evidence to show what effect

that zoning change had on value. See *Porter v. Cuyahoga Cty. Bd. of Revision*, 50 Ohio St.2d 307 (1977). The general information provided by the controller about expenses is also insufficient to justify the reduction sought. As we have held, "dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). Having disposed of NR4C's evidence, this board finds NR4C has not carried its burden.

Therefore, this board decides that the true and taxable values of the subject properties, as of January 1, 2017, were as follows:

PARCEL NUMBER 484-18-009

TRUE VALUE

$143,300

TAXABLE VALUE

$50,160

PARCEL NUMBER 484-18-083

TRUE VALUE

$766,300

TAXABLE VALUE

$268,210

PARCEL NUMBER 484-18-024

TRUE VALUE

$679,800

TAXABLE VALUE

$237,930

PARCEL NUMBER 484-18-012

TRUE VALUE

$151,700

TAXABLE VALUE

$53,100

PARCEL NUMBER 484-18-010

TRUE VALUE

$147,300

TAXABLE VALUE

$51,560

PARCEL NUMBER 484-18-082

TRUE VALUE

$375,300

TAXABLE VALUE

$131,360

OHIO BOARD OF TAX APPEALS

NORTH RIDGE SHOPPING CENTER LLC AND ROSSELL-NORTH JOINT VENTURE L.L.C., (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	))))))))	CASE NO(S). 2018-1140, 2018-1141 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NORTH RIDGE SHOPPING CENTER LLC AND ROSSELL-NORTH JOINT VENTURE L.L.C.
Represented by:
CATHERINE CUNNINGHAM
KEGLER, BROWN, HILL & RITTER CO., L.P.A.
65 E. STATE STREET, SUITE 1800
COLUMBUS, OH 43215

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

NEW ALBANY-PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants North Ridge Shopping Center LLC and Rossell-North Joint Venture LLC appeal from a decision of the Franklin County Board of Revision ("BOR") valuing the subject property at $4,820,000 for tax year 2017. Appellants and the appellee school board participated

at this board's evidentiary hearing and filed post-hearing briefs. Accordingly, we decide the case on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), the parties' exhibits, and the parties' written argument.

The subject property is operated as a John Deere agricultural equipment dealership by JD Equipment, Inc. ("JD Equipment"). The property appears to have been previously owned by JD Equipment's chief executive officer through a corporate entity. That corporate entity sold the subject in a sale-leaseback transaction in 2015 for $4,085,404, and a 20-year lease was executed with JD Equipment as the tenant. The subject subsequently sold in August 2017 for $4,820,000. The auditor assigned a value of $4,085,400 to the subject for tax year 2017, and both the school board and appellants filed valuation complaints.

At the BOR hearing, the school board argued the property should be valued at $4,820,000 per the August 2017 sale. In support, the school board presented the relevant conveyance fee statement and deed. The conveyance fee statement shows that a mortgage for $3,374,000 was obtained and no portion of the sale price was for non-realty. Appellants offered the testimony of Norman Murphy, chief financial officer for JD Equipment. Appellants also offered the appraisal and testimony of Victor Melfe, who concluded to a value of $2,270,000 as of January 1, 2017. The BOR ultimately adopted the sale price, i.e., $4,820,000, for tax year 2017.

At this board's hearing, appellants began by recalling Mr. Murphy and Mr. Melfe, its appraiser. Mr. Melfe testified that, while he has never testified before this board, he is a licensed appraiser. He concluded to a value of $2,270,000 using the sales comparison and income

capitalization approach, giving the most weight to the sales comparison. The school board called Thomas Sprout, MAI, who reviewed Mr. Melfe's appraisal. Mr. Sprout opined that Mr. Melfe's appraisal was flawed, which we discuss in greater detail below.

The parties made many objections before, during, and after this board's hearing. We address those first. One day before hearing, appellants filed a motion to exclude any exhibits disclosed by the school board and bar any testimony from Mr. Sprout. We first note all exhibits and witnesses were timely disclosed in accordance with this board's case management rule. Regardless, appellants argue it served the school board with discovery requests in November of 2018, but the school board never responded. That failure to respond, say appellants, should mean the school board cannot submit evidence. However, it does not appear appellants ever attempted to informally resolve outstanding discovery requests as required by this board's rules. The deadline to seek this board's involvement in contested discovery matters passed well before the appellants' motion was filed. Accordingly, we find the motion without merit and deny it.

Appellants also argue Mr. Sprout's testimony should have been excluded because he failed to submit a written report. However, a written report is not required for an appraisal review. See *Gahanna-Jefferson City Schools Bd. of Education v. Franklin Cty. Bd. of Revision* (June 6, 2018), BTA No. 2016-2634, unreported (citing *Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 421, 2015-Ohio-4522). In fact, the Ohio Supreme Court has told this board it errs by failing to address oral appraisal reviews. *Lutheran Social Servs. of Cent. Ohio Village Hous., Inc. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 125, 2017-Ohio-900. We also note that Sprout did provide documents to substantiate his lease comparable testimony. See H.R., Ex. A. For these reasons, we overrule the objection to Sprout's testimony and the school board's exhibit.

The school board objected to the introduction of several of appellants' exhibits citing R.C. 5715.19(G). Appellants do not dispute the documents were available when the case was presented to the BOR. Appellants have also failed to show good cause exists, e.g., why the documents were not presented to the BOR or if a good faith attempt to do so was made. Accordingly, we sustain the objection and do not consider those exhibits.

In turn, appellants objected to Sprout's market information (exhibit A) arguing R.C. 5715.19(G) applied. The school board argues the statute does not apply because the school board's appraisal evidence "was not in its knowledge of possession at the time of the BOR hearing." The record is clear Mr. Sprout was retained to do an appraisal review of Mr. Melfe's report after it was presented at the BOR. We also note the documents Mr. Sprout used (exhibit A) are time-stamped February 15, 2019, which was just before this board's hearing. Accordingly, we are compelled to find R.C. 5715.19(G) does not apply and overrule the objection. Next, the school board objected to the testimony of Mr. Melfe and Mr. Murphy also on R.C. 5715.19(G) grounds. We find their testimony is not barred by R.C. 5715.19(G) and overrule that objection.

Finally, the school board objected to the testimony of Mr. Melfe to the extent Mr. Melfe testified about the subjective motivations of the purchaser in the 2017 sale. The school board argued at hearing, "There is case law out there, especially from this Board when [it] has found there is a difference between the sale at issue versus verifying sales comparables in an appraisal report. The Supreme Court has affirmed this Board's exclusion of that information as hearsay." Having reviewed the relevant case law, we agree. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046 ("*UTSI*"). As the Supreme Court noted in *UTSI*, an expert witness is permitted to rely on hearsay statements. But, the court

held this board properly disregards evidence about the subject property when "an appraiser acts merely as a conduit of information concerning material facts about the subject property itself[.]" Id. at ¶ 38. In other words, an appraiser without sufficient personal knowledge of a transaction cannot be used as a conduit to introduce hearsay statements. Id. (citing *Almondtree Apts. of Columbus, Ltd. v. Franklin Cty. Bd. of Revision*, 10th Dist, Franklin No. 87AP-1216 (June 28, 1988)). This board has repeatedly rejected such evidence in accordance with UTSI. See, e.g., *Fargo Industrial Properties, LTD v. Cuyahoga Cty. Bd. of Revision* (July 5, 2019), BTA Nos. 2018-126 and 2018-136, unreported. For these reasons, we will not consider those statements by Mr. Melfe regarding the buyer's subjective motivations.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an appellant must furnish competent and probative evidence of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶ 6. The Ohio Supreme Court has long held a recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 33. A proponent may generally meet their burden with sale documents. The opposing party must then, to succeed, rebut the presumption created by the sale. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. No party contests the basic details of the sale, i.e., the grantor, grantee, sale price, and sale date. Accordingly, the burden of rebuttal shifts to appellants.

Having reviewed the evidence before us, this board finds the August 2017 sale has not been rebutted and is the best, most persuasive, evidence of value. Appellants presented no

credible evidence about the details of the sale which would cause this board to disregard it. Appellants argue the sale should be disregarded because it was subject to the existing lease. However, Ohio law does not require a sale to be disregarded simply because it was subject to an existing lease. *Terraza*, supra, at ¶¶ 31-34. The record shows the lease rate was not above-market. The school board presented lease comparables for properties well-tailored to the subject with rental rates between $15.69-$24.41/SF, indicating the JD Equipment lease was in market range. While Mr. Melfe's lease comparables were lower, we note (as did Mr. Sprout) that Mr. Melfe's lease comparables are substantially older than the subject and not as tailored as the lease comparables presented by the school board. Accordingly, we find no reason to reject the sale on the basis that the lease rate was above market.

While we recognize other factors may cause an existing lease to affect a sale price, including creditworthiness of the tenant, we find no such factors in this case. See *GC Net Lease @ (3) (Westerville), Investors L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856. Additionally, we see no reason to disregard the sale because of the lease duration as argued by appellants.

We recognize, as a result of a legislative change to R.C. 5713.03 and the Ohio Supreme Court's *Terraza 8* decision, this board must consider appraisal or other evidence of value in addition to any qualifying sales. However, a sale remains the best evidence of value. But, we are unable to find Mr. Melfe's appraisal to be better, more persuasive, evidence of value. We find his sale and lease comparables are not sufficiently tailored to the subject. For example, several sale comparables did not have a similarly large showroom, which both appraisers agreed was the crown jewel of the property. Given the comparables presented by the school board, it does seem to us more tailored comparables were available for use. At the very

least, even with adjustments, the comparable sales are sufficiently different that they are less

reliable than the sale of the subject itself. Finally, we find merit to Mr. Sprout's argument that a cost approach should have been developed. The subject is relatively newer, appellants had access to the construction information, and Mr. Sprout testified dealerships like the subject are often owner-occupied meaning market data is less readily available.

The appraisal process requires a wide variety of subjective judgments about underlying data with the goal of ascertaining a hypothetical market value. While we have considered the appraisal evidence, we still find the sale is more persuasive.

For these reasons, we order the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 222-000269-00

TRUE VALUE

$4,820,000

TAXABLE VALUE

$1,687,000

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
	)	CASE NO(S). 2017-2156
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

DOWNTOWN INVESTMENT GROUP, LLC
Represented by:
TIMOTHY J. WEYLS, JR.
ATTORNEY AT LAW
WEYLS PETERS + CHUPARKOFF, LLC
6505 ROCKSIDE ROAD, SUITE 105
INDEPENDENCE, OH 44131

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 101-36-049

and 101-36-054, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject property consists of a 13,790-square-foot (0.31657 acres) parking lot, most of which is paved, though a portion was previously improved with a building that was demolished and replaced with gravel. The fiscal officer initially assessed the subject's total true value at $1,500,000. The BOE filed a complaint with the BOR seeking an increase in value to $2,500,000. At the BOR hearing, the BOE presented information regarding a June 30, 2015 sale, arguing that the recorded sale price of $1,500,000 failed to account for an additional payment of $1,000,000 made to an entity related to the seller purportedly for a lease buyout and that the value of the real property should reflect the total amount paid ($2,500,000). The BOE also submitted an appraisal prepared in conjunction with the financing of the sale to show that $2,500,000 was the total consideration paid for the subject real property. The BOE also claimed that the subject sale was being used as a comparable sale by at least one appraiser, who utilized the $2,500,000 purchase price plus a demolition cost.

The appellee property owner, Downtown Investment Group, LLC ("DIG"), first challenged the BOR's jurisdiction to consider the 2016 complaint, arguing that it was an impermissible multiple filing within the interim period because the BOE had invoked the BOR's continuing complaint jurisdiction for the 2015 tax year. DIG next maintained that the BOE failed to establish that the purchase price was not $1,500,000 as reflected on the recorded sale documents. DIG argued that the use of the subject sale as a comparable in another appraisal should not be given any weight, particularly where the appraiser was not present to explain why the $1,000,000 lease termination fee that went to a separate legal entity was considered part of

the sale price. DIG also argued that the financing appraisal should be excluded and the attachments should not be considered. DIG asserted that even if the appraisal were considered, it would show that a $2,500,000 sale price calculates to a price per square foot above of the range and was not supported by the subject's actual income.

The BOR issued a decision maintaining the initially assessed valuation, which the BOE appealed to this board. This board convened a hearing, at which the BOE again argued that this board should rely on the sale of the subject property to establish the subject's value, asserting that the $2,500,000 total payment is attributable to the real property. The BOE also presented testimony and a written report from appraiser Gary Barker, MAI. Barker determined that the highest and best use of the subject property was for eventual mixed-use development but continued interim use as a parking lot. Barker considered the sales-comparison approach to value based on the sales of four properties in downtown Cleveland, including the June 2015 sale of the subject property utilizing a sale price of $2,500,000 for the transaction. After adjustments, Barker concluded to a value of $2,340,000. Barker also performed the income approach to value based on his assumption that the owner would utilize the gravel portion of the lot and conclusions regarding market rates for both daily and special event parking. Barker concluded to a net operating income of $203,971, which he capitalized at 7% plus a 3.58% tax additur, for a total value of $1,930,000. Barker gave more weight to the sales comparison approach because it required less subjectivity and estimates, reconciling to a value of

$2,200,000 as of January 1, 2016.

DIG again made the jurisdictional argument and moved for the underlying complaint to be dismissed. With respect to the sale, DIG pointed to a prior decision from this board, in which we found value for tax year 2015 based on the sale at issue in this appeal. *Cleveland Mun.*

Schools Bd. of Edn. v. Cuyahoga Cty. Bd. Of Revision (Mar. 6, 2018), BTA No. 2017-476, unreported. In the 2015 case, this board found that the sale was the best evidence of value and that the $1,000,000 lease termination fee was properly excluded from the purchase price. We, therefore, ordered that the value of the subject property was $1,500,000 as of January 1, 2015. For 2016, in addition to its cross-examination of Barker, DIG presented testimony from the controller for Geis Properties, who testified about the operations of parking lot. The controller also confirmed that it was DIG's intention to raze the building located on the property at the time of the sale and to ultimately redevelop the property.

Before we reach the merits of the present appeal, we must first consider whether the BOE's complaint properly invoked the BOR's jurisdiction. *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141 Ohio St.3d 149, 2014- Ohio-5030, ¶21 (confirming this board's inherent authority, if not obligation, to consider its own jurisdiction, which derives from that of the board of revision). DIG argues that the BOE's complaint is barred by R.C. 5715.19(A)(2)'s prohibition against multiple complaints filed within an interim period. "Under R.C. 5715.19(A)(2), a party dissatisfied with the valuation of property may file only one complaint in the [interim period]," based on the "schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year[,]" unless an exception applies. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20.

In this case, the BOE did not allege that any of the exceptions applies, but rather that the 2016 complaint was the first it had filed in the interim period and was, therefore, not a second complaint. The BOE readily acknowledges that it asked the BOR to take continuing complaint jurisdiction over tax year 2015 pursuant to R.C. 5715.19(D) while tax year 2014 was pending

before this board. Tax year 2015 was the first year of the interim period, and DIG insists that the BOE's "continuing complaint" qualified as its first filed "complaint" under R.C. 5715.19(A), which would prohibit the BOE from filing for subsequent years in the interim period without alleging and proving one of the exceptions.

Under R.C. 5715.19(D), when a party files a complaint and that complaint is not determined by the BOR within the 90-day period set forth in R.C. 5715.19(C), the complaint continues as a valid complaint for any ensuing year until it is finally determined. In such circumstances, the original complaint continues in effect without further filing by the original complainant or its assignee. R.C. 5715.19(D). The court has observed that "no particular formal requirements constrain the party who asserts a continuing complaint" because the original complaint continues in effect and requires no further filing. *Novita Industries, L.L.C. v. Lorain Cty. Bd. of Revision*, 153 Ohio St.3d 57, 2018-Ohio2023, ¶17. It follows, therefore, that the invocation of continuing complaint jurisdiction for a subsequent year is not a "complaint" that would bar the filing of a subsequent year within the interim period. Thus, the 2015 continuing complaint did not prevent the BOE from filing a valid 2016 complaint without alleging a relevant exception. We further note that because tax year 2015 was pending at the time the 2016 complaint was filed as a continuation of the 2014 complaint, nothing barred the BOE from again invoking continuing complaint jurisdiction for tax year 2016. *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 238, 2018- Ohio-230, ¶¶9-10 (there are no clear mechanics or timeliness requirements in the statute and to impose a deadline is contrary to its plain language).

We acknowledge DIG's policy argument that the BOE should be prohibited from litigating the same issues for 2016 it unsuccessful litigated for the prior years. As the Tenth

District Court of Appeals has commented, "[t]he apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, 79 Ohio App.3d 781, 784 (1992). The court responded to the lack of defined time constraints or procedures for the invocation of continuing complaint jurisdiction by explaining that "it's up to the General Assembly to make an easy fix." *Lifepath*, supra, at ¶10, citing *State ex rel. Nimberger v. Bushnell*, 95 Ohio St. 203 (1917), syllabus ("When the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by legislative enactment and not by judicial construction."). We accordingly deny DIG's motion to dismiss the complaint.

As we next consider the valuation of the property, we note that while there may not be a jurisdictional prohibition to the litigation of the property's value for tax year 2016, the BOE is barred from relitigating certain issues related to the sale of the property due to the doctrine of collateral estoppel. The court has explained that "[f]or purposes of collateral estoppel, the ultimate issue of tax value in one tax year does not constitute the 'same issue' as the ultimate issue of tax value in a different year. *** But the determination in an earlier year of a discrete factual/legal issue that is common to successive tax years may bar relitigation of that discrete issue in the later years." *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, ¶17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*,

10th Dist. Franklin No. 92AP-1715 (Dec. 28, 1993). Thus, while the BOE is not precluded from litigating the value of the subject property for tax year 2016, the discrete issues surrounding the sale, such as the arm's-length nature and sale price, are settled.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Rebuttal evidence may include an appraisal, such as the appraisal evidence presented in this case, to demonstrate that the sale was not reflective of market value or provide affirmative evidence of value. *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302, ¶9, citing *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855.

In this case, although we consider Barker's appraisal, we note that no one challenges the recency of the sale to the tax lien date, and both the purchase price and arm's-length nature of the sale are settled law. Thus, as we consider the appropriate weight to give Barker's appraisal, we reaffirm the "best-evidence rule of property valuation" as discussed in *Terraza*, which creates a rebuttable presumption that the sale price reflected true value. Looking to Barker's analysis, most notable is his use of a purchase price that this board found was not appropriate. As such, the BOE attempts to utilize Barker's appraisal as a vehicle to circumvent this board's

prior ruling regarding the sale, and we find that to do so would be unwarranted in this case and improper. With respect to the rest of the data in Barker's appraisal, we find that he performed a reasonable and well-supported appraisal analysis, but that the properties in his sales comparison analysis (other than the subject) required gross adjustments ranging from 35% to 50% to account for physical differences. On the other hand, the sale of the subject itself requires no such adjustment, and we find that it provides a better indication of value of the subject property on the tax lien date. Accordingly, we find that the BOE failed to demonstrate the sale was not qualifying for valuation purposes and the record establishes that the $1,500,000 purchase price constitutes the best indication of the value of the subject property on the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

PARCEL NUMBER 101-36-049

TRUE VALUE

$175,700

TAXABLE VALUE

$61,500

PARCEL NUMBER 101-36-054

TRUE VALUE

$1,324,300

TAXABLE VALUE

$463,510

OHIO BOARD OF TAX APPEALS

ILVIO M ZACCARDELLI, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-544
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - ILVIO M ZACCARDELLI
4419 CLAGUE ROAD
NORTH OLMSTED, OH 44070-2319

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, December 31, 2019

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant Ilvio Zaccardelli appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of the subject property for tax year 2018. No hearing was requested, and no party filed written argument. We decide the case on the notice of appeal and the statutory transcript.

The subject property is a single-family residence, which the fiscal officer valued at $149,500 for tax year 2018. Appellant filed a decrease complaint requesting a value of $125,000. The complaint also states the taxable value of the property should be $0. As justification, appellant wrote that the property is in disrepair. He specifically noted issues with the sewer, walls, roof, and landscaping. Appellant did not appear at the BOR hearing or submit evidence; the BOR ultimately found appellant failed to carry his burden.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Neither the fiscal officer nor the BOR bears the "burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, there have been no recent sales of the subject property. Therefore, we turn to the allegations in the complaint, which constitute the only evidence appellant presented. While an owner is competent to opine on the value of his or her property, this board need not adopt that opinion of value unless probative evidence supports the owner's opinion. *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500 (1997). Here, appellant presented no probative evidence to support his opinion of value. Even if the factual allegations in the complaint were true, evidence of negative characteristics is generally insufficient to justify a reduction in value unless a party shows what effect those characteristics have on value. See *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). While we are sympathetic to the statements in appellant's notice of appeal about his fixed income, "it is beyond the scope of this board's authority to adjust property values based on such circumstances." *Windham v. Richland Cty. Bd. of Revision* (June 24, 2008), BTA No. 2007-T-253, unreported. Having disposed of appellant's arguments and evidence, this board finds appellant has failed to carry his burden.

For these reasons, this board decides that the true and taxable value of the subject property, as of January 1, 2018, were as follows:

PARCEL NUMBER 237-22-028

TRUE VALUE

$149,500

TAXABLE VALUE

$52,3304